

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

GLORIA PERSONHUBALLAH	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:13-cv-678
	)	
JAMES B. ALCORN, et al.	)	
Defendants.	)	

**MEMORANDUM IN RESPONSE TO REMEDIAL PLANS  
ON BEHALF OF BULL ELEPHANT MEDIA LLC**

Bull Elephant Media LLC [“TBE”] hereby submits the following Memorandum in response to the remedial plans submitted to the Court pursuant to the order of September 3, 2015. TBE submitted two plans [“TBE Plan A”] and remedial Plan B [“TBE Plan B”] [collectively the “TBE Plans”].<sup>1</sup> This Memorandum is being submitted pursuant to the authority granted to non-parties under the Courts Orders of September 3 and 25, 2015.

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<sup>1</sup> An error was made in the drafting of both plans where a precinct in Richmond was improperly placed in a non-contiguous place in Richmond. A minor fix affecting two precincts will be described below.

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About Bull Elephant Media, LLC

As noted on its website, [www.thebullelephant.com](http://www.thebullelephant.com), TBE was founded in 2013 as an organization designed to “provide unique coverage of politics and policy in Virginia and elsewhere, giving particular emphasis to those issues and concerns important to conservative and libertarian grassroots Republicans.” TBE is generally made up of “conservative grassroots activists with deep ties to the Republican Party. [TBE’s] equity holders and other contributors are not political professionals.” TBE is known as a prominent right-leaning source of news and analysis. Although each TBE contributor is responsible for his or her own content, writers at TBE have been publicly critical of the Virginia redistricting process and actions or inactions of relevant parties and non-parties leading up to the order requiring the appointment of a Special Master.<sup>2</sup> Among TBE’s contributors are three Virginia licensed attorneys with election law experience, all of whom participated in the preparation of this brief.

**I. OVERVIEW**

The TBE plans were created with the idea that the deficiencies of the Third Congressional District as found by the Court are capable of remedy without entirely ignoring the formal preference as stated by the General Assembly in the 2012 plan. TBE looked at a handful of factors routinely utilized in performing a redistricting analysis and sought to make modifications to the existing Congressional redistricting plan. TBE Plan A focuses on the problems inherent in and around the 3rd Congressional District. Only the 1st, 2nd, 3rd, 4th and 7th Districts are affected. TBE Plan B is a more comprehensive statewide approach.

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<sup>2</sup> This point is made to emphasize that although TBE may be viewed as partisan in nature, TBE does not serve the interests of incumbents for purely partisan purposes. TBE encourages the Court to look on the TBE Plans with a fresh perspective understanding that they have not been adjusted with the input of any Virginia member of Congress or member of the General Assembly. For examples of critical writings of TBE contributors please see: <http://thebullelephant.com/?s=redistricting>  
<http://northernvirginialawyer.blogspot.com/p/road-to-redistricting-litigation-in.html>

## II. STANDARDS FOR REDISTRICTING

The Brief of nonparty OneVirginia2021 (Document No. 214) provides many of the standards for redistricting. Virginia law and federal law contain a series of standards with which the Court and Special Master will be substantially familiar, nonetheless a breakdown of the standards that must be applied and that can be applied are laid out below:

### A. REQUIRED STANDARDS

Four areas are required standards for redistricting plans in Virginia, two based on Virginia law, one based on the determination of this Court, and one based on federal law: 1. equalization, 2. compactness, 3. contiguity, and 4. remediation of the constitutional violation.

#### *1. Remediation of the constitutional violation*

The Court determined on June 5, 2015 that race was the predominant factor in drawing the 2012 redistricting plan. Doc. 170 p. 50. As this is a violation of the equal protection clause of the 14th Amendment to the US Constitution, the remedy should be targeted at reducing or eliminating race as a consideration under the remedial plan. The parties are faced with the twin challenge of attempting to avoid the packing or dilution of Black Voting Age Population (“BVAP”) under a remedial plan. As the constitutional infirmity of the 2012 Plan was the use of race as a predominant factor, race should not be the predominant factor in any remedial plan. *The options here are to either make race a minor factor, or eliminate it altogether as a factor.* If race is considered as an even more important factor in the drawing of a remedial plan it cuts against the clear directive of this Court.

#### *2. Compactness*

Under the Virginia Constitution compactness is a major factor to consider in redistricting. Virginia Const. Art. II § 6. Unfortunately, Virginia case law is unclear as to the measure of

compactness, referring to it as a “spatial” analysis. *Jamerson v. Womack*, 423 S.E.2d 180, 184 (Va. 1992). The dissenting Justices in *Womack* went so far as to suggest the Virginia Supreme Court wrote compactness entirely out of the Virginia Constitution by the use of the vague term “spatial.” *Id.* at 188. As the majority still held that compactness has meaning, this Court is left with minimal guidance as to the spatial characteristics most important in Virginia. What little we do know about compactness suggests that differences in the backgrounds/economies of people (urban v. rural) within a district need not be considered in a compactness analysis for a plan passed by the legislature. *Id.* at 186.

There are various compactness scores sometimes utilized. All of these scores have shortcomings and benefits. At the outset, *each of these scores would unnecessarily penalize any plan that attempted to preserve the 2012 Plan to some extent.* These scores often do not take into consideration natural geographic and artificial political boundaries. For example:

Under the Polsby-Popper method the score for a long skinny district that follows geographic or political boundaries will necessarily be far worse than the score for a largely solid district with a clearly gerrymandered promontory. The focus on the perimeter of a district deemphasizes otherwise solid logically shaped districts.

Under the Reock method a long skinny district that follows geographic or political boundaries would score far worse than a district with numerous and clearly gerrymandered, but short promontories. Further, the Reock score provides a clear preference for communities separated by water as the water is essentially subtracted from the equation as each separate community is measured and then totaled.

The Convex Hull method provides a clear preference for communities separated by water as the water is essentially subtracted from the equation as each separate community is measured

and then totaled. Still, this is likely the most effective measurement to avoid gerrymandering if gerrymandering is described as the attempt to pick and choose communities for inclusion or exclusion from a district for political purposes.

### 3. *Contiguity*

Contiguity, thankfully is a clearer requirement under Virginia law. Virginia Const. Art. II § 6. “While ease of travel within a district is a factor to consider when resolving issues of compactness and contiguity, resting the constitutional test of contiguity solely on physical access within the district imposes an artificial requirement which reflects neither the actual need of the residents of the district nor the panoply of factors which must be considered by the General Assembly in the design of a district. Short of an intervening land mass totally severing two sections of an electoral district, there is no *per se* test for the constitutional requirement of contiguity.” *Wilkins v. West*, 571 S.E.2d 100, 109 (Va. 2002). If a small portion is contiguous by water it is not repugnant to the concept of contiguity. *Id.* at 110. Given how little case law there is in Virginia on the issue of contiguity, great deference appears to have been granted legislative determinations when balanced against other factors. The Court need not reduce the importance of contiguity to adjust for political factors that a legislature may consider paramount. The essence of a gerrymandered district is either a lack of compactness or lack of contiguity. The Court should endeavor to avoid the appearance of gerrymandered districts in any plan adopted.

### 4. *Equalization*

Congressional Districts must be equal in population with as close to zero deviation as possible, generally. U.S. Constitution, Art. I § 2. Nonetheless, exact equalization need not be required when a plan is promulgated by a legislature, as the Supreme Court stated:

“[W]e are willing to defer to state legislative policies, so long as they are consistent with constitutional norms, even if they require small differences in the population of congressional districts. Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives. As long as the criteria are nondiscriminatory...” *Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (citations omitted). In this instance the plan is not being promulgated by a legislature and the standards are actually more permissive. “Once a constitutional violation has been found, a District Court has broad discretion to fashion an appropriate remedy.” *Karcher v. Daggett II*, 466 U.S. 910, 910 (1984) (Justice Stevens Concurring) (citation omitted) (denial of a request for a stay, no majority opinion was issued.)

## B. STANDARDS OF LEGISLATIVE PREROGATIVE

The General Assembly, when formulating a redistricting plan may show preferences for certain reasonable considerations such as incumbent protection. The General Assembly set a Congressional redistricting plan for 2012, and the General Assembly routinely suggests a preference for preservation of political boundaries.

### 1. *The 2012 Plan*

The General Assembly chose a Congressional redistricting plan for 2012. Although that plan has been struck down on grounds of Constitutional infirmity, it is the single enacted preference of the General Assembly for this Court to consider. The Intervenor-Defendants, Congressional Republicans [“CR’s”], spend extensive time in their brief explaining why the 2012 Plan should be given deference. The Plaintiffs, NAACP, and the Governor each explain why legally the 2012 plan should be disregarded. Regardless, the Court has the option to

consider the 2012 plan, and TBE feels it is appropriate to consider it as one of the factors on balance.

*2. Preservation of political boundaries*

The preservation of political boundaries is an acceptable concern in redistricting. Although the legislature appears to consistently list it among redistricting considerations, and other jurisdictions consider preservation of political divisions of paramount concern, it is neither a state nor a federal requirement in the Virginia redistricting process. A preference for preservation of political boundaries is reasonable and should be considered as another factor on balance.

*3. Other legislative prerogatives*

Given the inability to read the minds of the members of the General Assembly, other considerations, not enshrined in passed legislation, need not be considered. Considerations such as protection of incumbents and preservation of partisan voting populations within a district should be of minimal or no concern in this process.

**III. THE TBE PLANS WERE CREATED WITH A STRONG EMPHASIS ON ALL OF THE ABOVE CONSIDERATIONS.**

TBE submitted two plans, TBE Plan A addressing the area in and around the 3rd District, and TBE Plan B, a statewide approach seeking to fix some of the issues, particular to Northern Virginia where compactness was all but ignored.<sup>3</sup> TBE feels the Court should focus on resolving the constitutional difficulties of the 3rd District and not redraw the map for the entire

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<sup>3</sup> As previously indicated a small fix needs to be made in both of these plans. A precinct in Richmond was inadvertently placed in the 4th District that should have been in the 3rd District to maintain contiguity. Voting district 501 in Richmond needs to be moved to the 3rd District from the 4th District and voting District 802 needs to be moved to the 4th District from the 3rd District. This is a total shift of less than 500 people and maintains the deviation from perfect equalization at less than 1000 people per district while preserving all precinct boundaries.

Commonwealth. Nonetheless, if redrawing the map extends beyond southeastern Virginia, TBE feels that a reasonable effort to fix problems in the remainder of Virginia is appropriate.

## A. TBE PLAN A

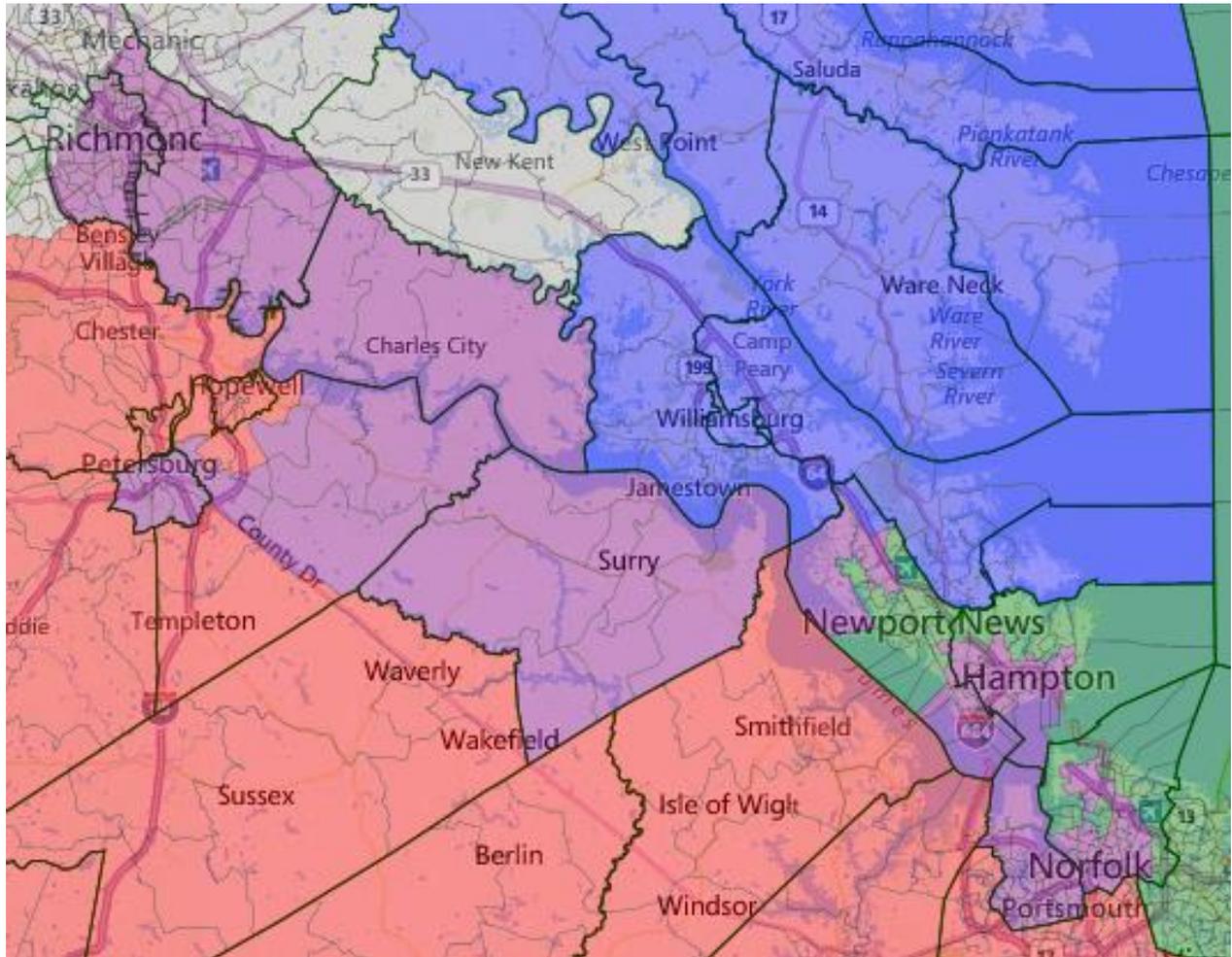
### 1. *Remediation of the constitutional violation*

TBE did take race into consideration when creating a remedial plan. In contrast to the Court's findings on the 2012 plan, race was not the predominant factor in creating TBE Plan A. Under TBE's plans, the 3rd District is still maintained as a minority/majority district with a BVAP of approximately 52%. An attempt was made to maintain a BVAP above 50% to avoid dilution while keeping it below the level of the 2002 plan of 53% to avoid cramming. The 3rd District, instead of being "loosely" based along the James River, is now strongly based along the James River encompassing communities on both the north and south sides. It is also substantially more compact than the 3rd District of the 2012 Plan. Consideration of race was ignored outside the 3rd District and may or may not have lead to increases in the BVAP in the 1st, 2nd, 4th, and 7th Districts.

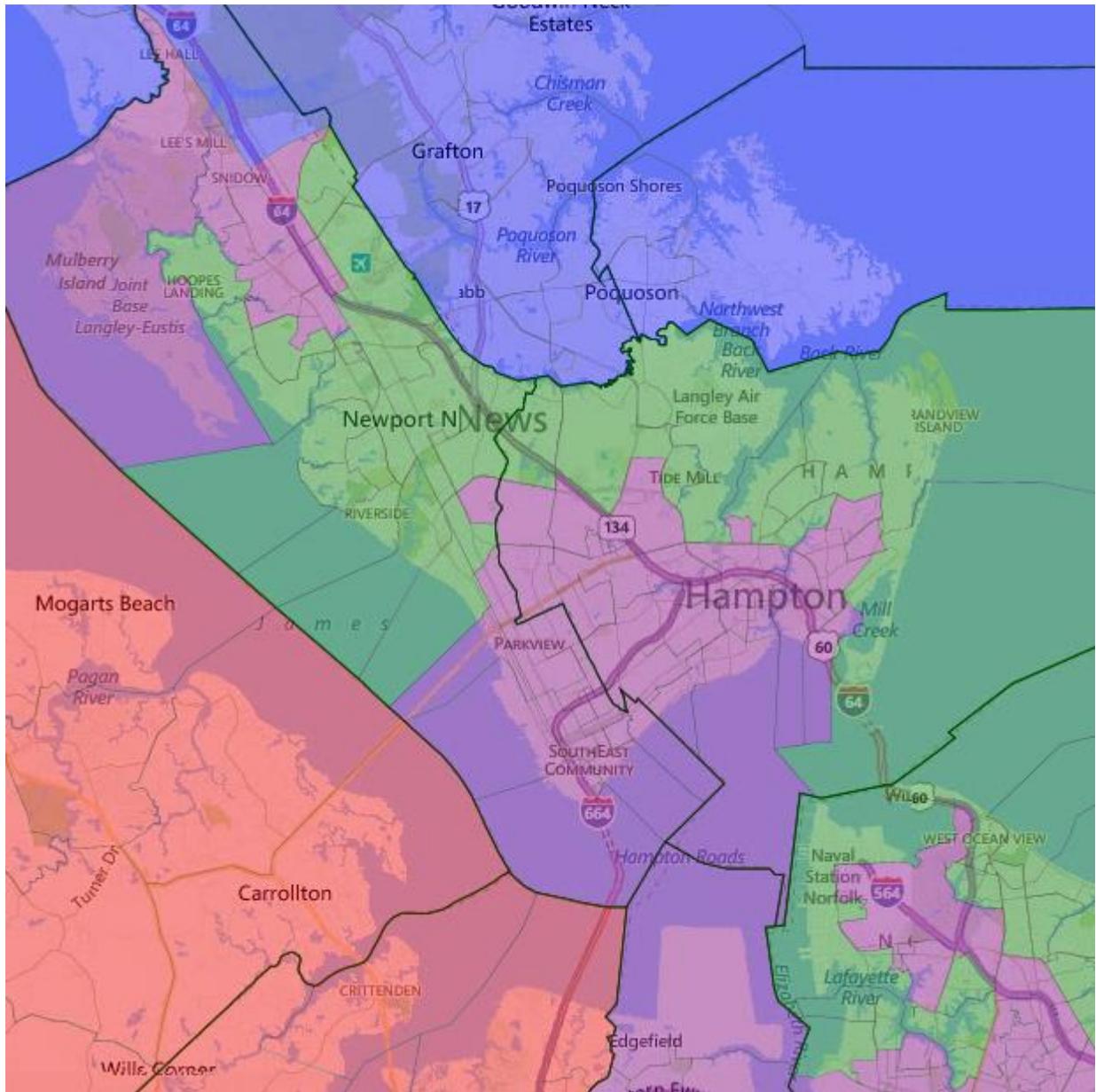
### 2. *Compactness*

TBE Plan A placed a heavy emphasis on compactness by eliminating many of the blatant gerrymanders in the primary affected areas.

The 3rd District under the 2012 plan was a disjointed combination of three distinct areas.

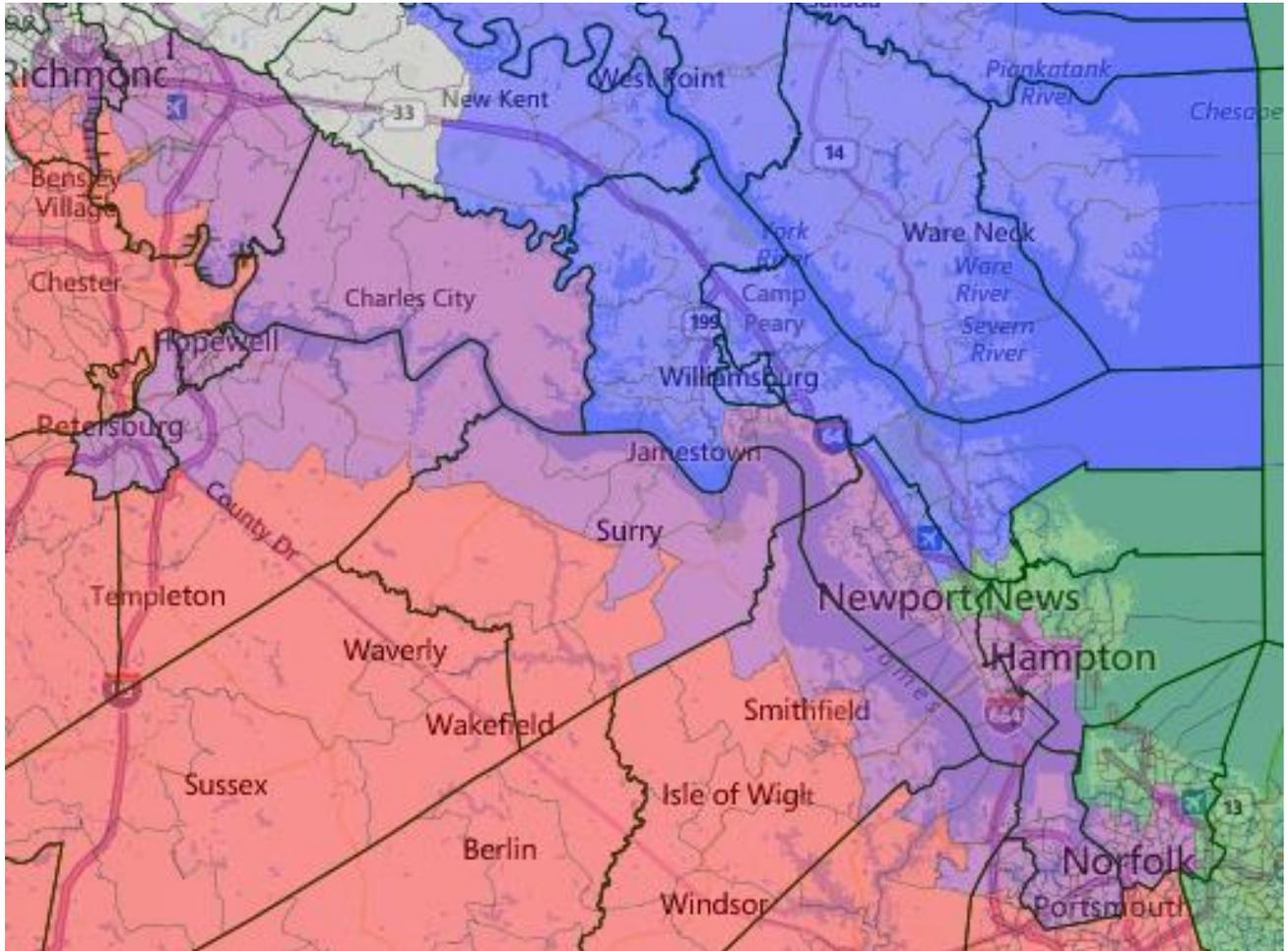


The portions where the 3rd District and 2nd District met under the 2012 Plan were downright scrambled in Newport News, Hampton and Norfolk:

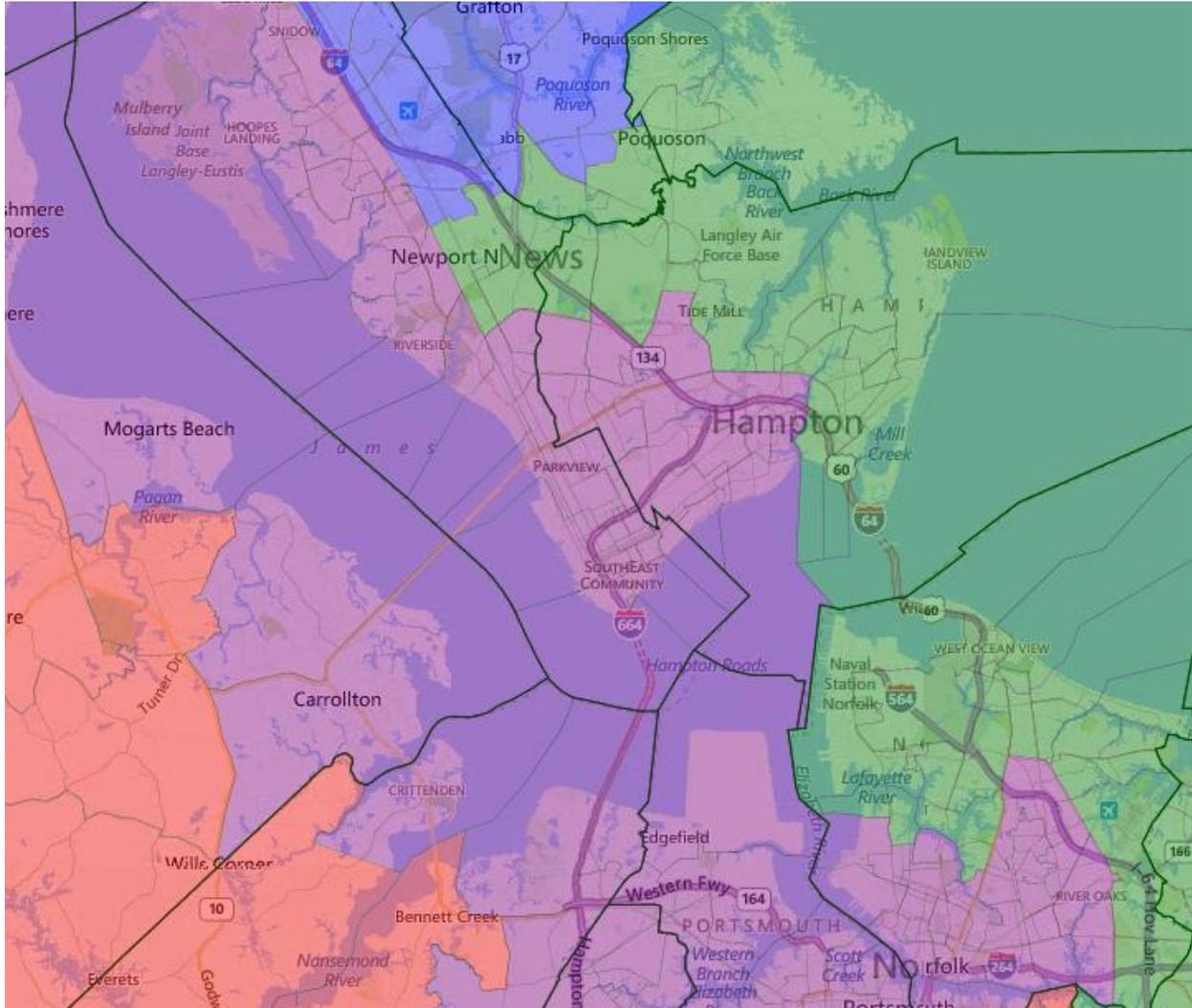


TBE Plan A eliminates both the disjointed nature of the 3rd District and the scrambled areas of Newport News, Hampton, and Norfolk.

TBE Plan A, 3rd District:



TBE Plan A Newport News, Hampton, and Norfolk:



3. *Contiguity*

Contiguity is where TBE Plan A is strongest. Because of the preference in the 2012 plan (and nearly all of the parties that provided submissions) to have the 3rd District run along the James River and the 2nd District take up parts of Virginia Beach, the Eastern Shore, and part of the Virginia Peninsula, making these two districts internally contiguous is a challenge. Although bodies of water can be utilized as a basis for contiguity, the substantial gaps in the Hampton Roads area necessitate careful crafting.

As can be seen in the maps above, the 3rd District in TBE Plan A is internally contiguous in that it can be traveled entirely by car except for a miniscule portion in Isle of Wight County. The northwestern portions of the 3rd District are connected to the southwestern portions of the 3rd district by route 156/106 the Benjamin Harrison Memorial Bridge from Charles City County down to Prince George County. The southwestern portion of the 3rd District then runs along the southern portion of the James River in Surry and Isle of Wight Counties where there is a gap over water (to preserve precinct boundaries) of about 1700 feet. Part of Isle of Wight County and Suffolk City then connect to Newport News via Route 17/258/32, the James River Bridge. The large portion of the 3rd District in the Virginia Peninsula does not require travel across any substantial bodies of water. The Virginia Peninsula portion of the Bridge then connects to Portsmouth, Norfolk and portions of Suffolk City via interstate 664, the Monitor Merrimac Memorial Bridge. The Virginia Peninsula portion of the 3rd Districts runs along the north side of the James River back up to precincts in James City County a mere 1.75 mile gap from the precincts on the southern side of the James River. Although each of these features can be seen in the maps above, it is important to note that these geographic features were considered and accommodated.

The 2nd District, as in most maps, runs from the Eastern Shore down to Virginia Beach. TBE Plan A has the 2nd District run through substantial parts of Norfolk and across the Hampton Roads Bridge Tunnel to the Virginia Peninsula. The Court should pay close attention to the submissions of the other parties, some of which utilize the Ocean View Precinct in Norfolk and the Phoebus Precinct in Hampton City to create the minimal access to claim contiguity by road.

*4. Equalization*

TBE Plan A maintains equalization of the districts with a deviation of less than 1000 people per district. This means that the highest rate of deviation for any district is about .135% or approximately one tenth of one percent. Due to limitations in the software utilized that requires all areas to be divided by precinct, areas outside of the 1st, 2nd, 3rd, 4th, and 7th Districts appear to be slightly modified. In reality no changes were intended for the 5th, 6th, 8th, 10th, and 11th Districts. This small deviation from perfect equalization is warranted by the fact that no precinct is split in the affected areas allowing for efficient election administration and preservation of communities of interest. Given the broad powers held by the Court to fashion a remedial plan this minimal deviation from perfect equalization is warranted by the reasonable desire to preserve political boundaries at the smallest level.

*5. Utilization of the 2012 Plan*

TBE Plan A started not with a blank map but with a precinct by precinct facsimile of the 2012 Plan. Precincts for the 3rd District were adjusted along the James River to create a contiguous district. The disjointed mess in Norfolk was unscrambled. This was all done with the idea that the districts needed to be equalized. Parts of the adjacent districts were then modified to obtain equalization. To the extent practical, County and City lines were respected. Finally some minor adjustments were made to ensure a BVAP above 50% in the 3rd District while otherwise ignoring racial composition of other Districts. TBE Plan A used the 2012 Plan as a baseline, created a contiguous James River based 3rd District, and otherwise tried to meet the remaining standards. This can be seen when comparing the map to the 2012 Plan.

6. *Preservation of political boundaries*

Admittedly, preservation of political boundaries, something not required by Virginia or federal law was not a major focus of TBE Plan A. TBE Plan A does divide the map on a precinct basis allowing for readily identifiable political units at a low level.

7. *Conclusion*

TBE Plan A has a focus on compactness and contiguity, preserves equalized districts, does not abandon the 2012 Plan, and addresses the Court's concerns about the unconstitutionality of the 3rd District. What follows are explanations of why TBE Plan A is preferable to the other plans submitted.

**B. TBE PLAN B**

As previously indicated, TBE Plan B addresses problems in the remainder of the Commonwealth and was submitted only if the Court is considering a statewide approach. The southeastern portion of TBE Plan B is nearly identical to TBE Plan A. As such, TBE adopts the arguments from the previous section regarding TBE Plan A.

1. *Remediation of the constitutional violation*

The argument for TBE Plan A is adopted.

2. *Compactness*

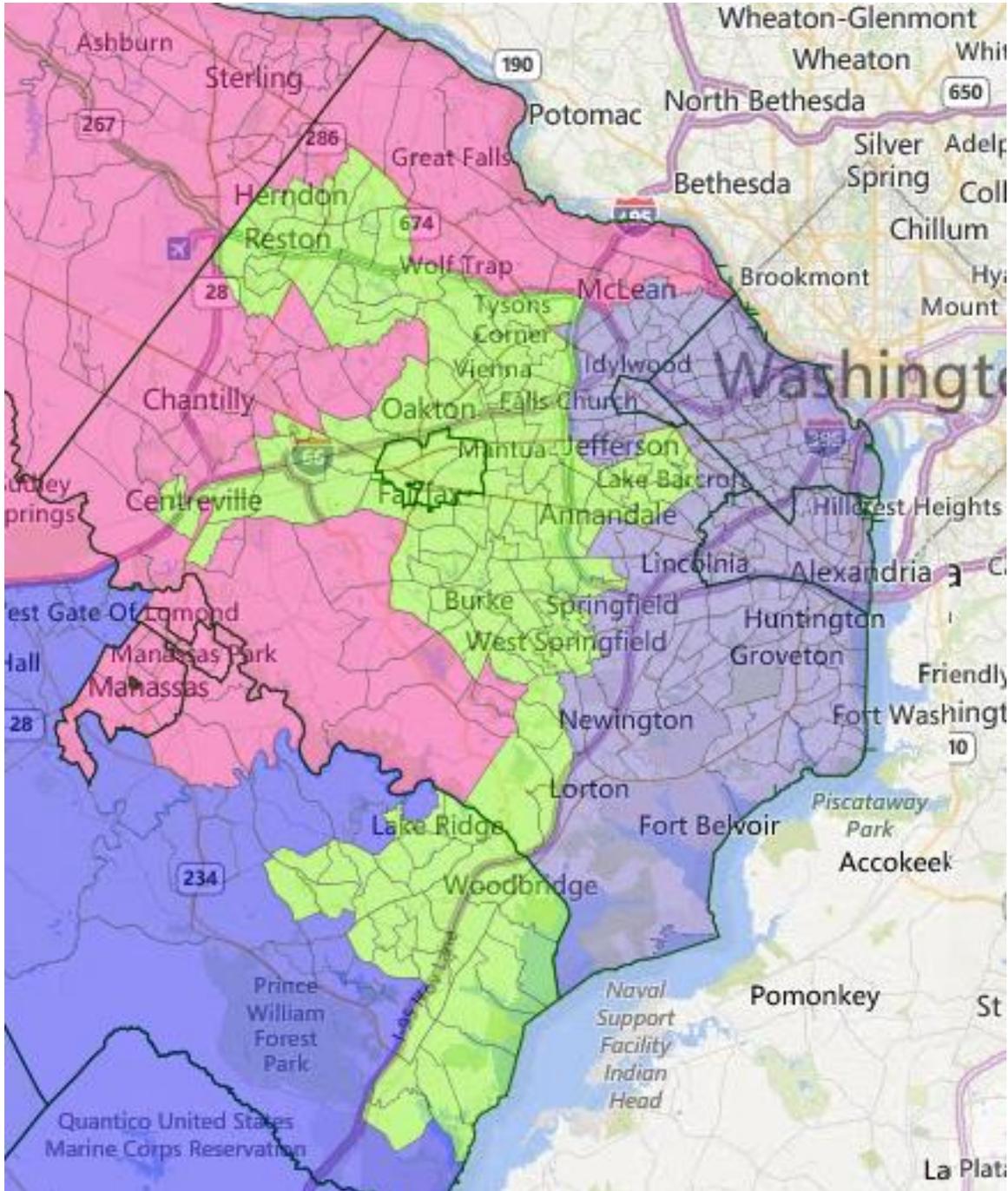
The argument for TBE Plan A is adopted.<sup>4</sup> Additional efforts were performed to remedy compactness issues as follows:

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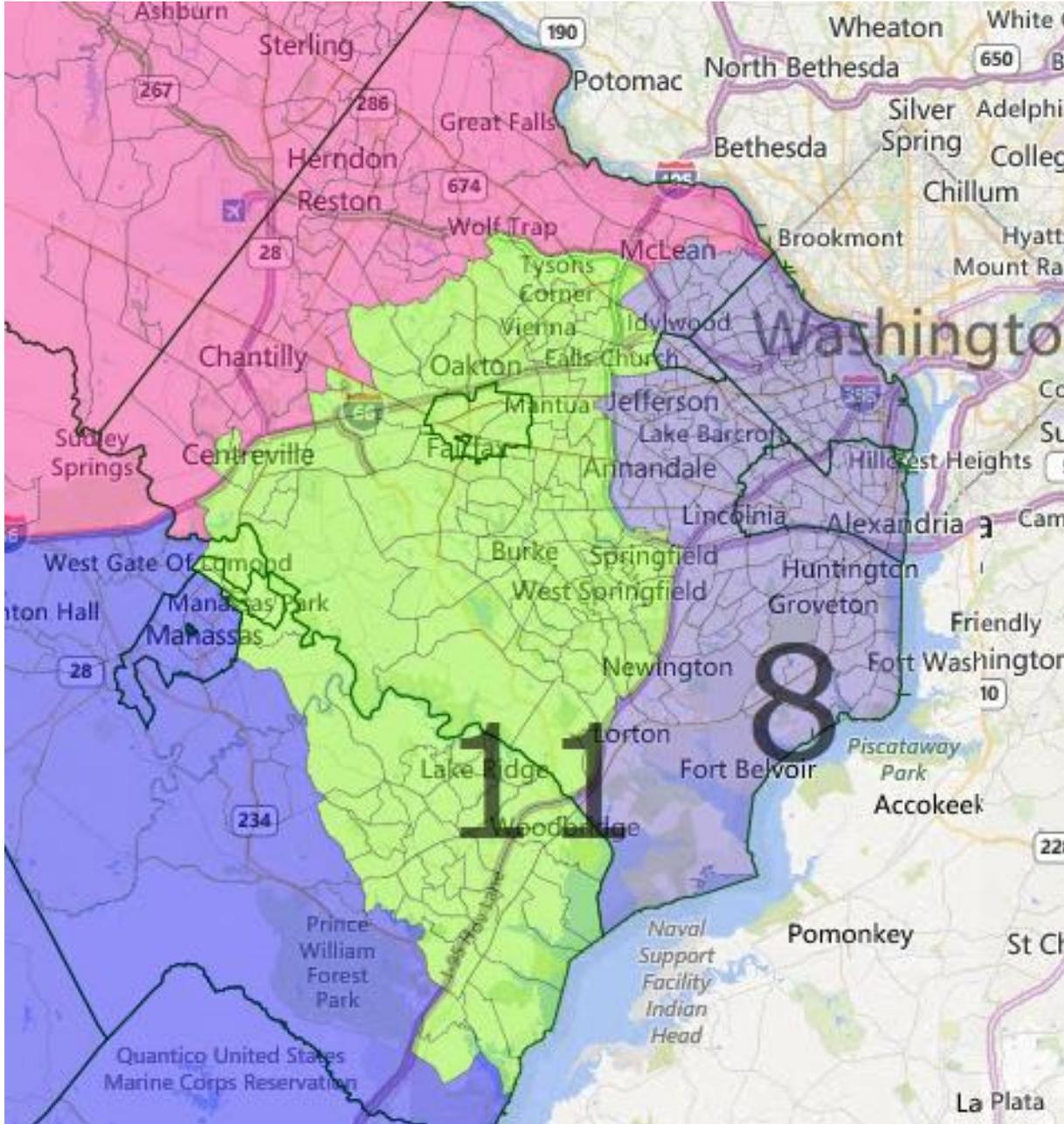
<sup>4</sup> TBE understands that Mr. Garrett is submitting a brief suggesting that TBE Plan B was submitted to purposefully dilute the votes of Asian populations in Northern Virginia. TBE, in the promulgation of TBE Plan B did not in any manner consider the increase or decrease of any minority population in Northern Virginia. TBE otherwise has no need to respond to such an improper accusation.

In the 2012 Plan the 11th District looks like a flailing creature with appendages and a tail.

The 10th District appears to be swallowing the creature.



TBE Plan B fixes this area in Northern Virginia by creating cohesive blocks of precincts:



Additional changes were made to make it so the 5th District did not run nearly the entire width of the state from the North Carolina border up to Maryland.

### 3. *Contiguity*

The argument for TBE Plan A is adopted.

4. *Equalization*

The argument for TBE Plan A is adopted.

5. *Utilization of the 2012 Plan*

The argument for TBE Plan A is adopted. Additionally the Court can look to TBE Plan B's section on compactness for information about the remainder of the Commonwealth.

6. *Preservation of political boundaries*

The argument for TBE Plan A is adopted.

7. *Conclusion*

TBE Plan B has a focus on compactness and contiguity, preserves equalized districts, does not abandon the 2012 Plan, and addresses the Court's concerns about the unconstitutionality of the 3rd District, but does so on a statewide basis. What follows are explanations of why TBE Plan B is preferable to the other plans submitted.

**IV. COMPARISON OF THE TBE PLANS TO THE OTHER REMEDIAL PLANS**

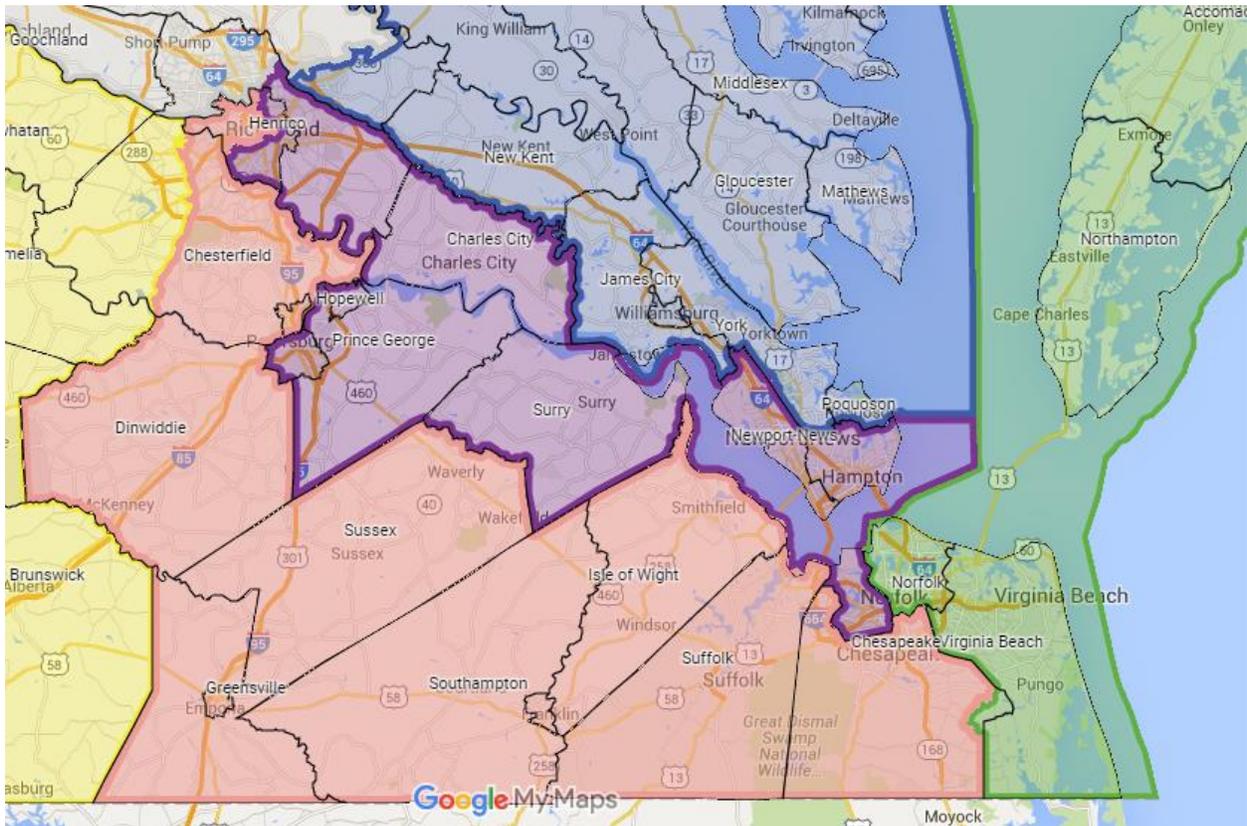
Based on the factors above the TBE Plans have been compared to each of the submissions of the other parties. A chart breaking down the comparisons is attached as Exhibit 1.

**A. PLAINTIFFS' SUBMISSION.**

Plaintiff's submission is less preferable than the TBE Plans for two reasons.

First, the Plaintiffs' plan clearly uses racial considerations as the primary factor in redistricting. The 2012 plan was struck down because race was determined to be the primary factor in redistricting. Instead of making race one of a number of factors, the Plaintiffs' plan brings it to the forefront in trying to create two districts with specific racial composition in order to obtain a specific electoral outcome based on race.

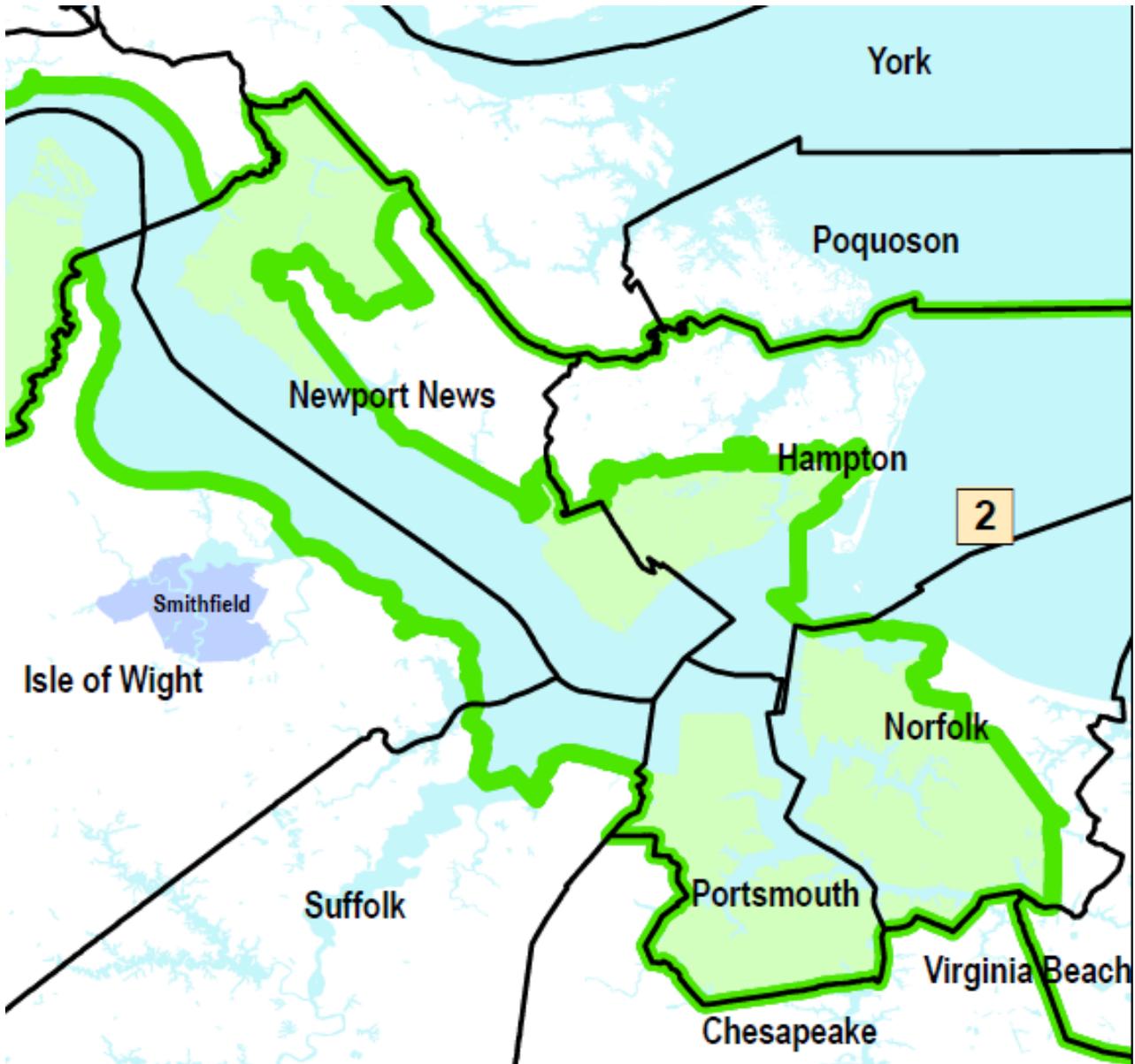
Second, and very importantly, the Plaintiffs 3rd District continues to not be contiguous. The lack of contiguity in the 2012 Plan was one of the reasons cited by the Court as why the Court believed that race played a predominant role in the 2012 Plan. Here is a map of the affected area:



The western portion of the 3rd District is not connected to the Virginia Peninsula portion, which in turn is not connected to the Portsmouth area. The major difference between the Plaintiffs' plan and the 2012 Plan is merely the preservation of political boundaries. The district remains nearly as gerrymandered as the 2012 Plan for racial purposes.

## B. CONGRESSIONAL REPUBLICAN’S [“CR’S”] SUBMISSION

The CR’s submissions have substantial defects in the areas of compactness and contiguity as seen in this map of the far southeastern portion of the Commonwealth:



The Third District is substantially not compact. The 2nd District has an appendage reaching far into the Virginia Peninsula that may not be contiguous. The northern Newport News portion of

the 3rd District may be connected by a 0 population landbridge to maintain contiguity.

Regardless, the eastern and western portions of the 3rd District are not contiguous. These plans appear to be a minimalist attempt to redraw the map as close to the 2012 Plan as possible.

### C. GOVERNOR'S SUBMISSION.

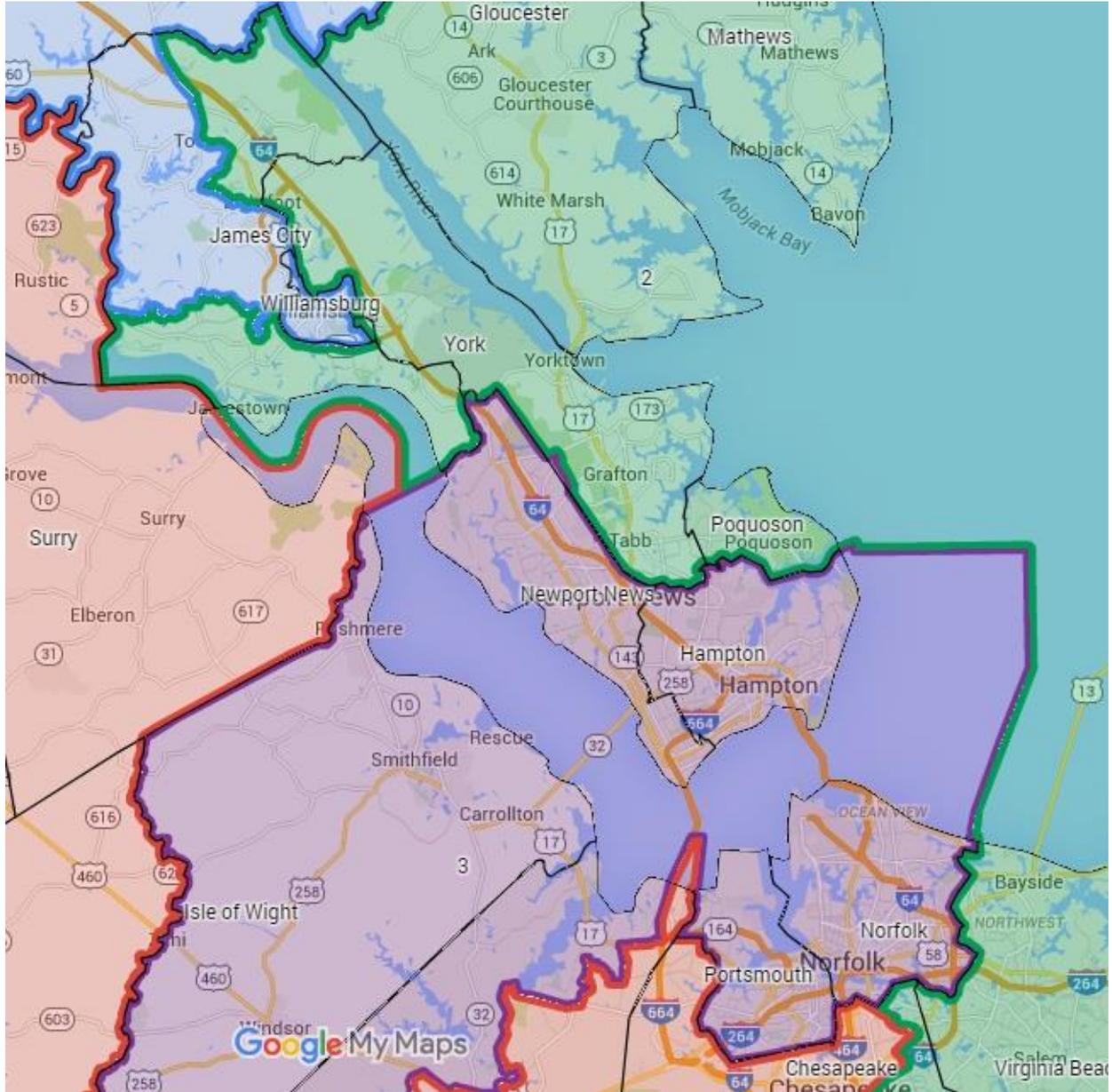
The Governor's submission is less preferable than the TBE Plans for three reasons.

First, the Governor's plan clearly uses racial considerations as the primary factor in redistricting. The 2012 plan was struck down because race was determined to be the primary factor in redistricting. Instead of making race one of a number of factors, the Governor's plan brings it to the forefront in trying to create two districts with specific racial composition in order to obtain a specific electoral outcome based on race.

Second, the Governor's 2nd District is no longer contiguous. The Hampton Roads Bridge Tunnel has been cut out of the 2nd District making it impossible to travel the 2nd District by road without crossing into other districts, unless you charter a boat to cross the Chesapeake Bay. At its closest point the Chesapeake Bay would have to be traveled approximately 13 miles by water.

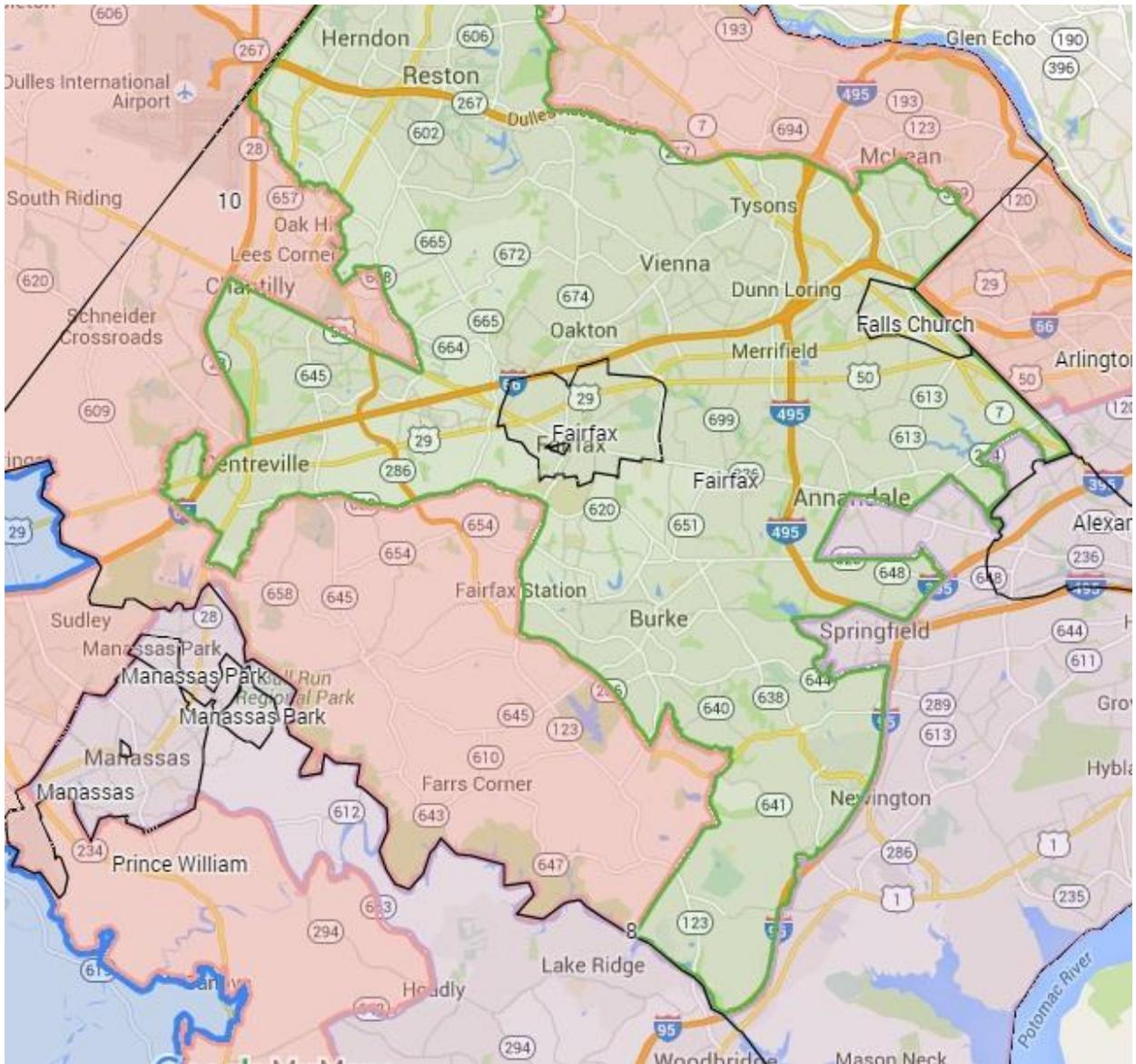
Third, tendrils and promontories are prevalent in seven separate districts, the 1st, 2nd, 3rd, 5th, 8th, 10th, and 11th Districts. This plan creates more problems with compactness than exist in the 2012 Plan that had severe deficiencies. These problems can be seen in the following maps:

2nd and 3rd Districts:

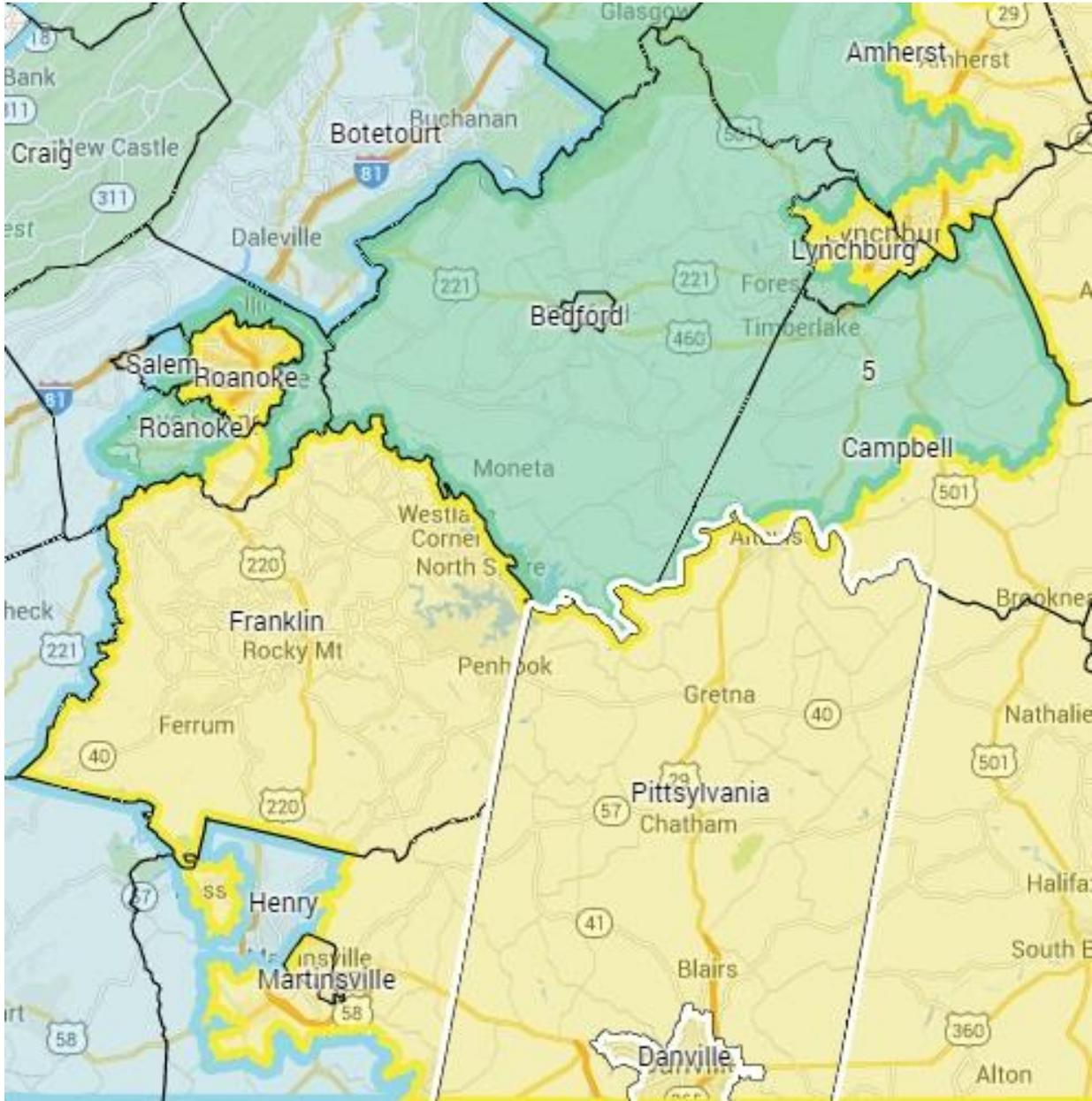




Here is a zoomed in version of the intersections of the 8th, 10th and 11th Districts which appear to have no purpose except to gerrymander these areas for political reasons:



Here are the oddities of the 5th District (in yellow) where the communities of Lynchburg, Roanoke, Martinsville, and a portion of northern Henry County are incorporated via the use of appendages:



The contiguity problems in the 2nd District of the Governor's plan are severe enough to warrant dismissing the plan, but when viewing the remainder of the Commonwealth, it is apparent that picking and choosing constituencies regardless of compactness is a driving force.

#### D. NAACP SUBMISSION

The NAACP's submission is less preferable than the TBE Plans for three reasons.

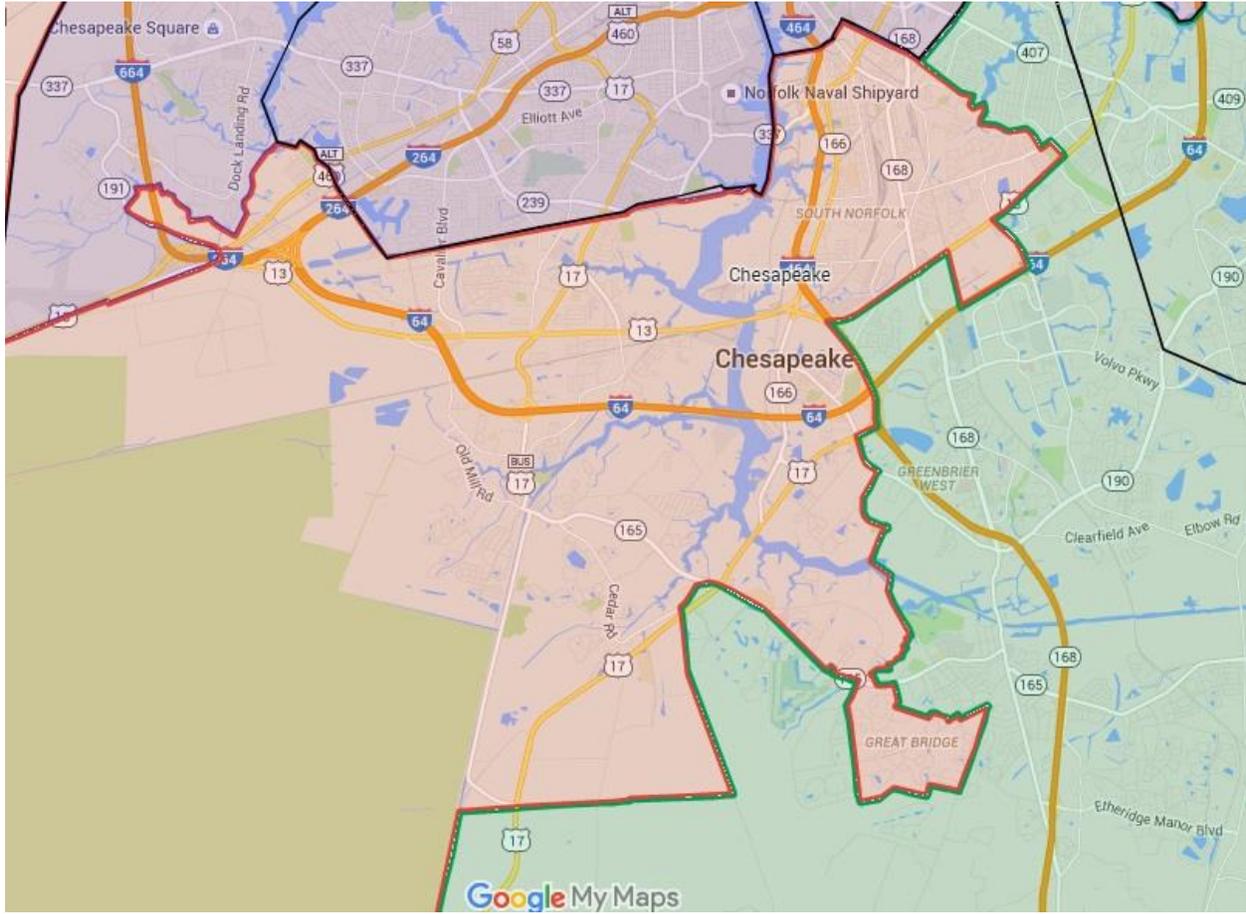
First, the NAACP's plan clearly uses racial considerations as the primary factor in redistricting. The 2012 plan was struck down because race was determined to be the primary factor in redistricting. Instead of making race one of a number of factors, the NAACP's plan brings it to the forefront in trying to create two districts with specific racial composition in order to obtain a specific electoral outcome based on race.

Second, the NAACP's 2nd District is no longer contiguous. The Hampton Roads Bridge Tunnel has been cut out of the 2nd District making it impossible to travel the 2nd District by road without crossing into other districts, unless you charter a boat to cross the Chesapeake Bay. At its closest point the Chesapeake Bay would have to be traveled approximately 17 miles by water.

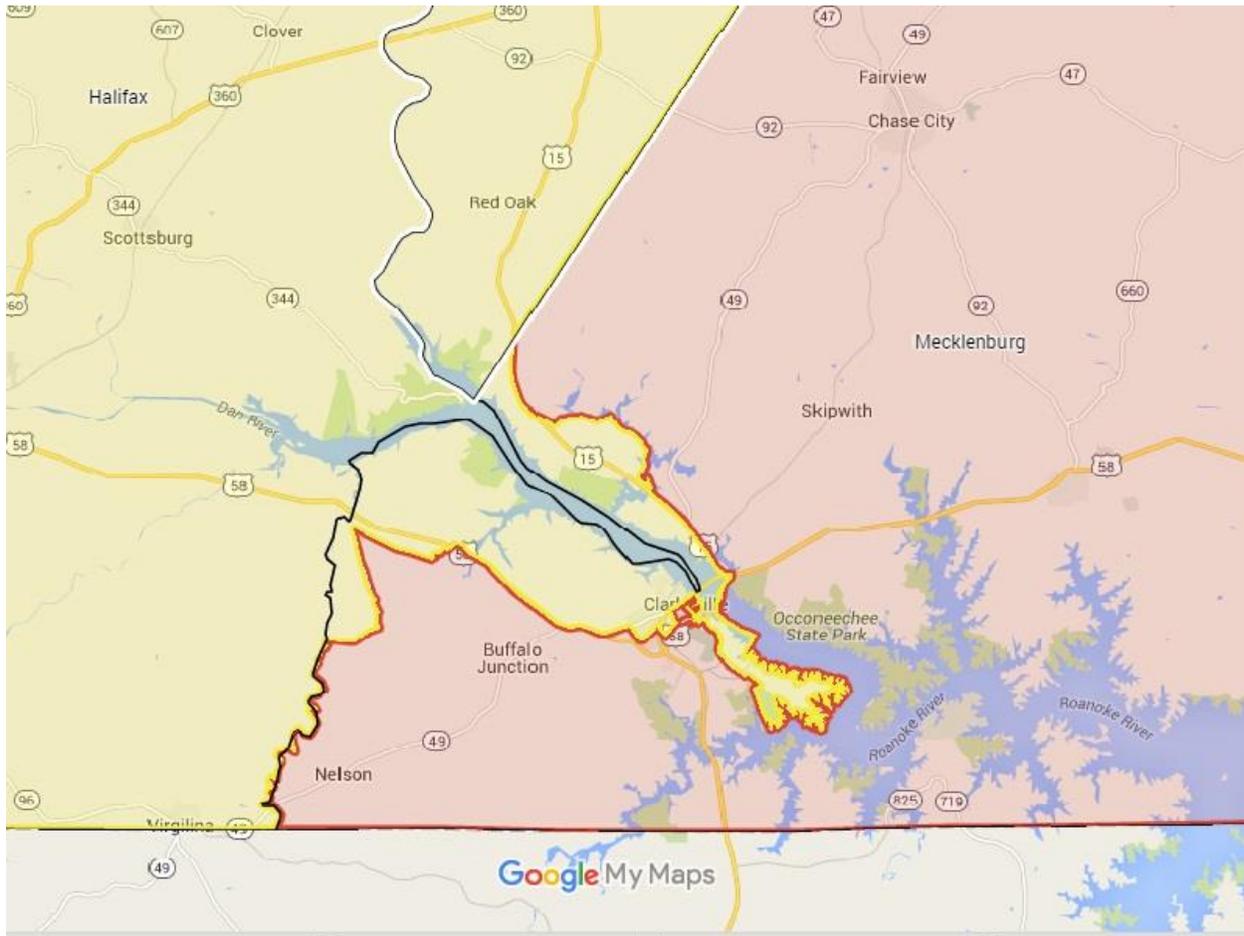
Third, tendrils and promontories are prevalent all throughout the 4th District. This is done to incorporate communities with higher BVAP's in order to create the new minority majority district. This plan creates more problems with compactness than exist in the 2012 Plan that had severe deficiencies. These problems can be seen in the following maps:



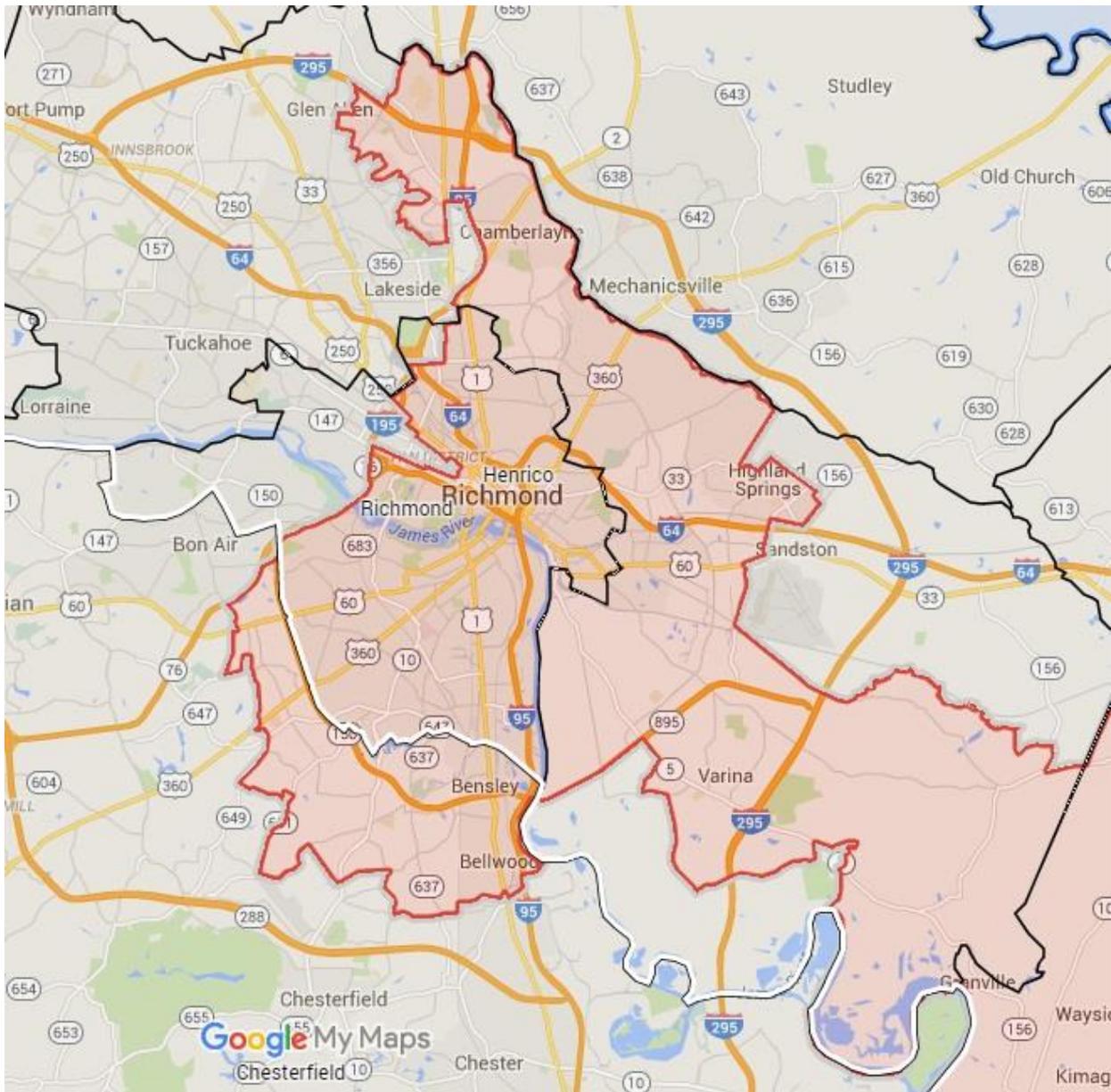
The Chesapeake area of the 4th District showing selection of individual communities:



The Mecklenburg County carve out in the 4th District:



And then the Richmond promontory with no consideration for political lines, but full consideration for racial composition:



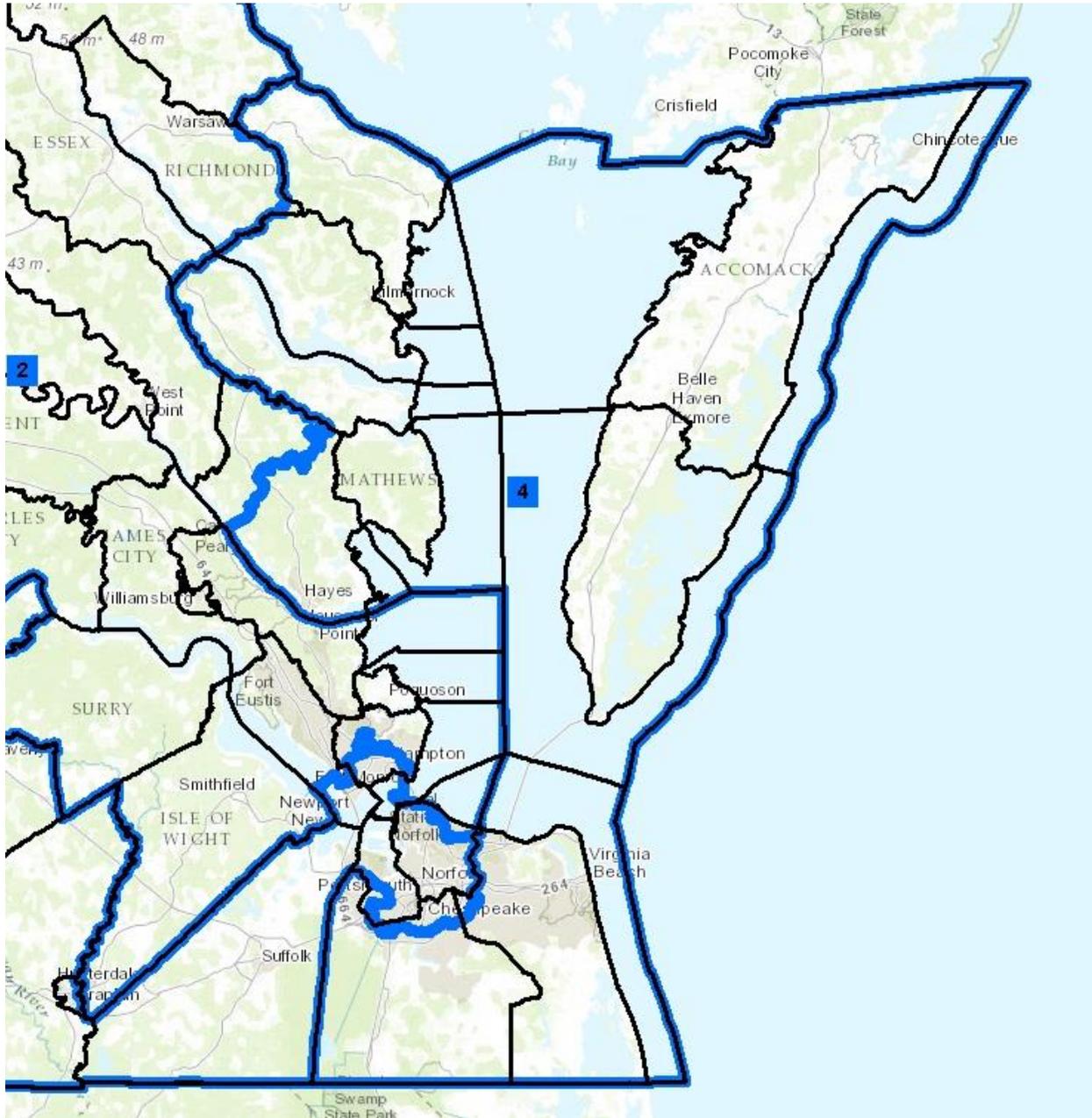
Similar to the deficiencies in the Governor’s plan the contiguity problems in the 2nd District of the NAACP plan are problematic enough to warrant dismissing the plan, but when viewing the 4th District, it is apparent that picking and choosing constituencies based on race, regardless of compactness is a driving force.

## E. RICHMOND FIRST [“R1”] SUBMISSION

R1’s submission is the result of a redistricting competition and has many positive attributes given the purposes behind the plan were largely in keeping with constitutional redistricting standards. It does not, in any way, attempt to conform to the 2012 Plan. Nonetheless, the R1 plan is less preferable than the TBE Plans for two major reasons.

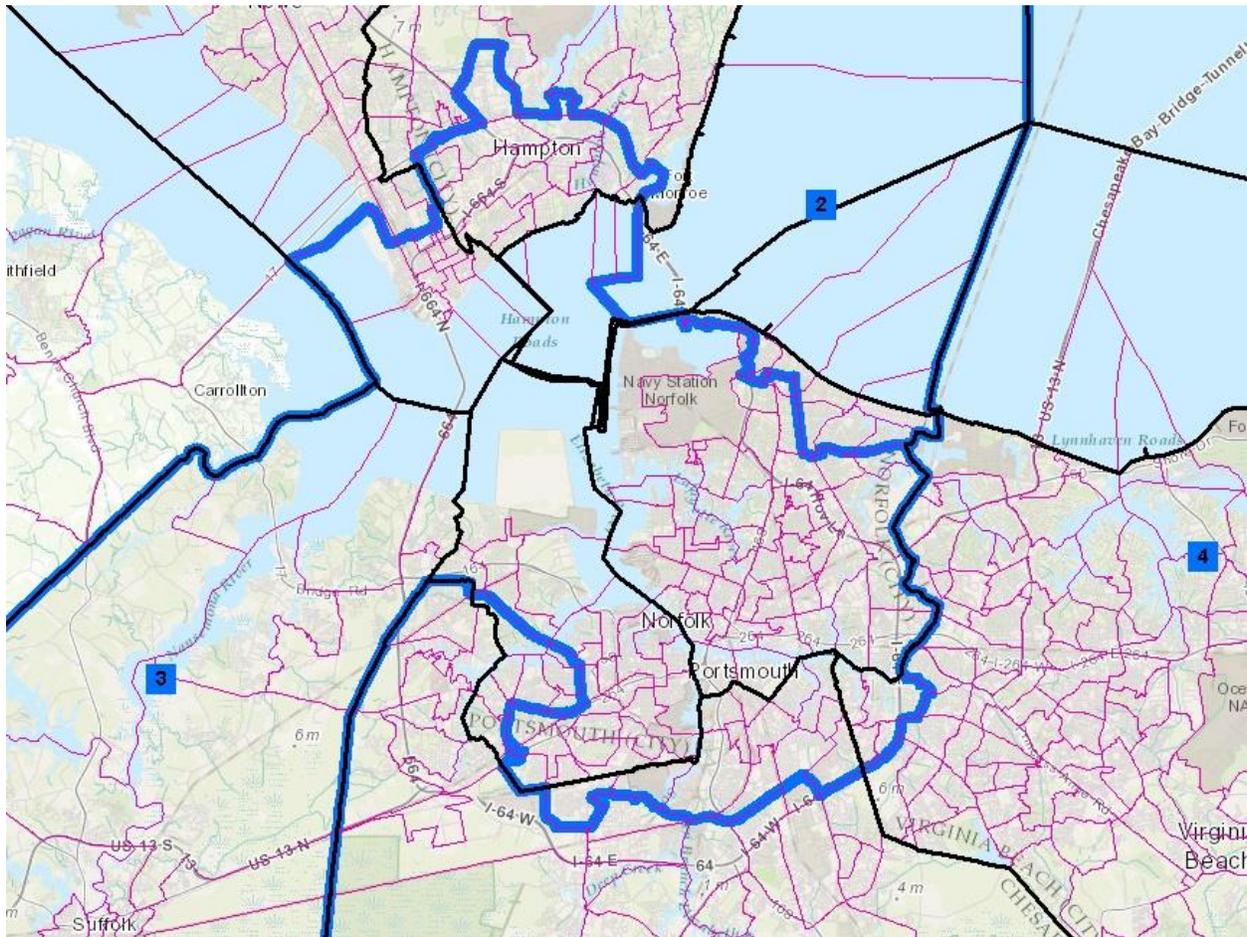
First, the R1 plan’s 4th District (the equivalent of the 2nd District in most other plans) is no longer contiguous. All of the Virginia Peninsula has been cut out of the 4th District. This makes the 4th District a combination of three peninsulas and the Virginia Beach/Chesapeake area. It is impossible to travel the 4th District by road without crossing into other districts, unless you charter a ferry to cross the Chesapeake Bay. At its closest point the Chesapeake Bay would have to be traveled approximately 13 miles by water.

A map of the 4th District shows how separated the portions are:



Second, tendrils and promontories are prevalent in the Hampton Roads and Norfolk areas.

The oddest promontory occurs in the 2nd District which extends across the Hampton Roads Bridge Tunnel to encapsulate a few precincts in Norfolk while most of the land mass of the 2nd District lies north of Richmond. These problems can be seen here:

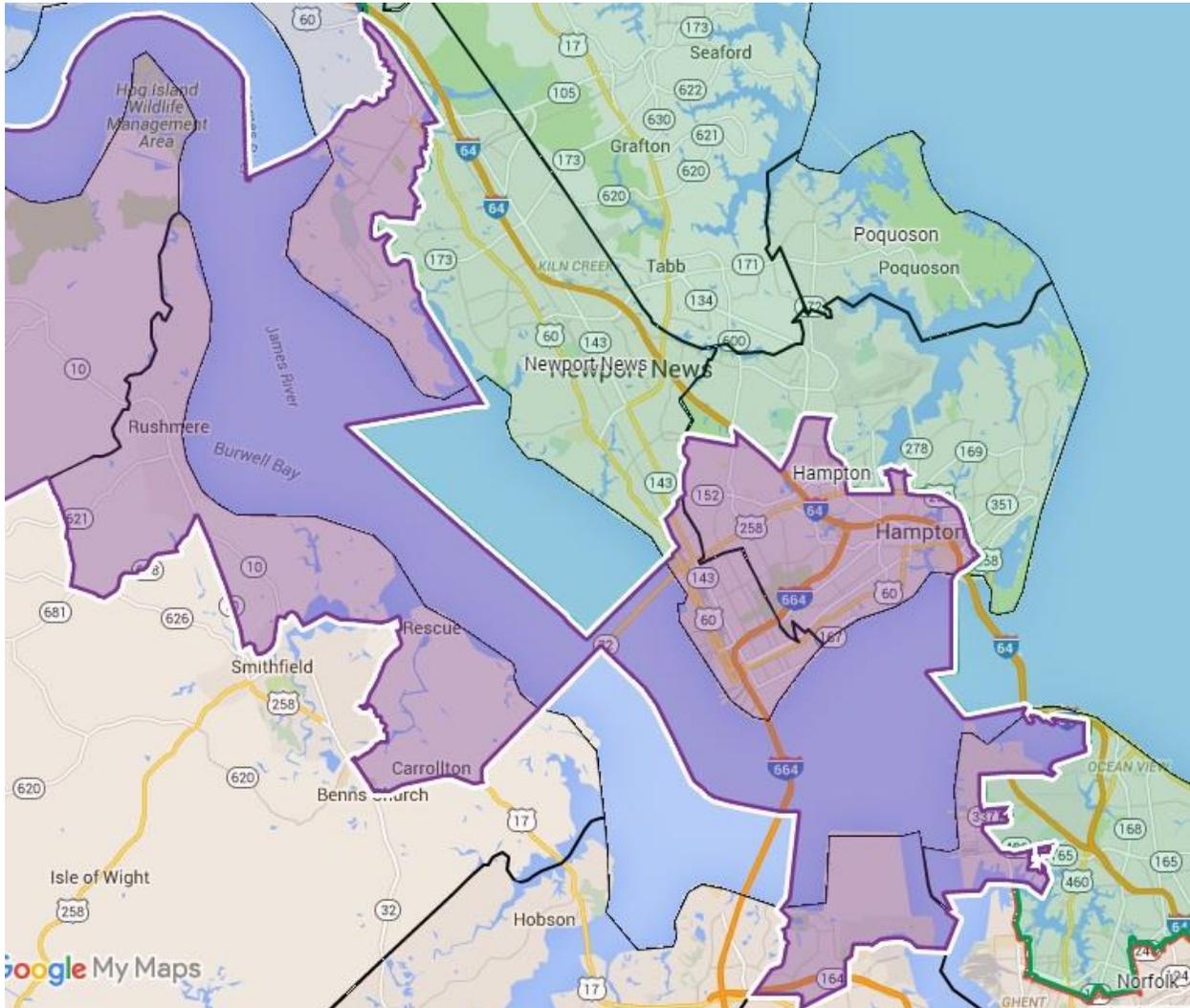


#### F. SEN. CHAP PETERSEN SUBMISSION

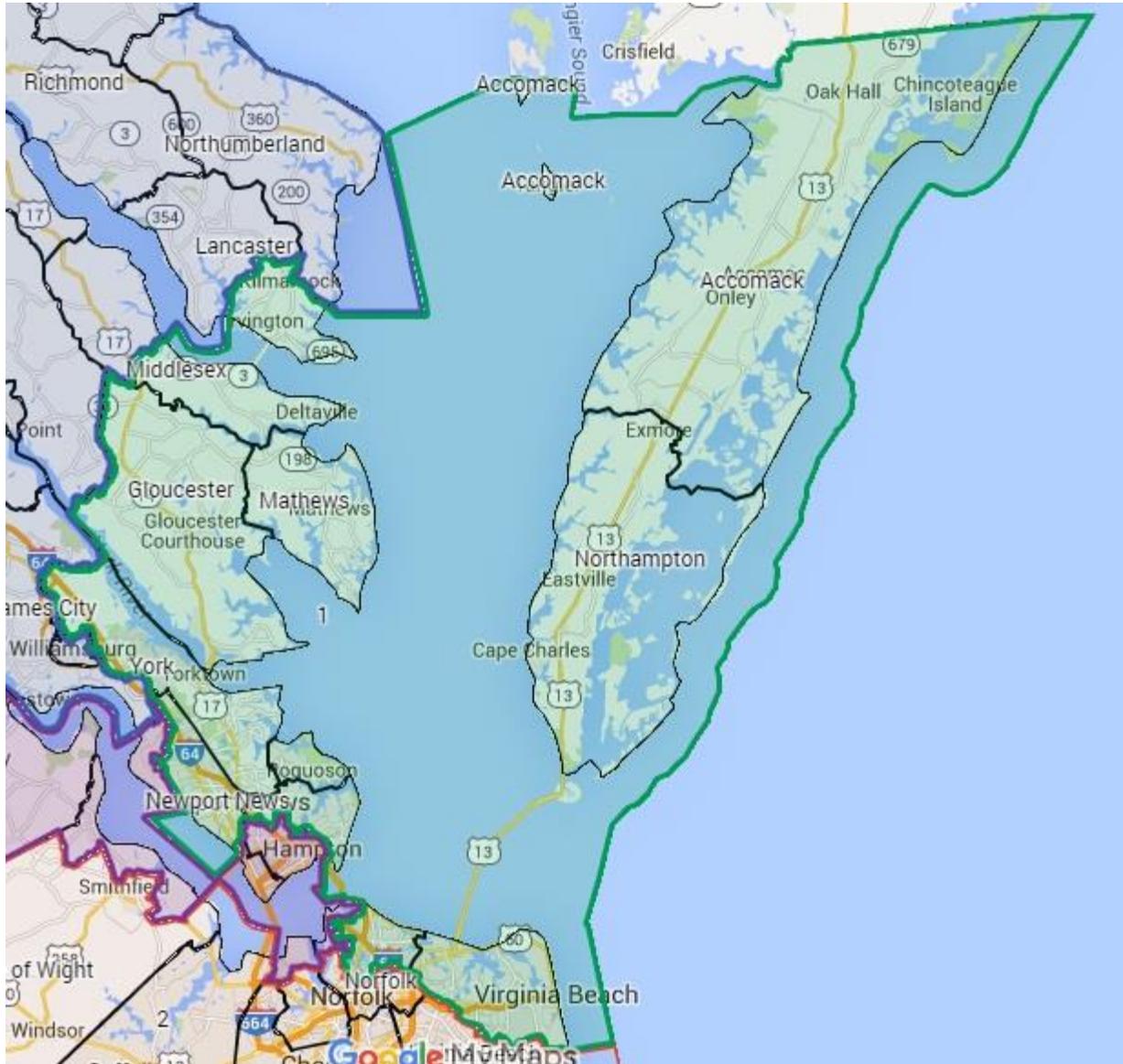
Sen. Petersen’s submission is the result of a redistricting competition and has many positive attributes given the purposes behind the plan were largely in keeping with constitutional redistricting standards. It does not, in any way, attempt to conform to the 2012 Plan.

Nonetheless, Sen. Petersen’s plan is less preferable than the TBE Plans for two major reasons.

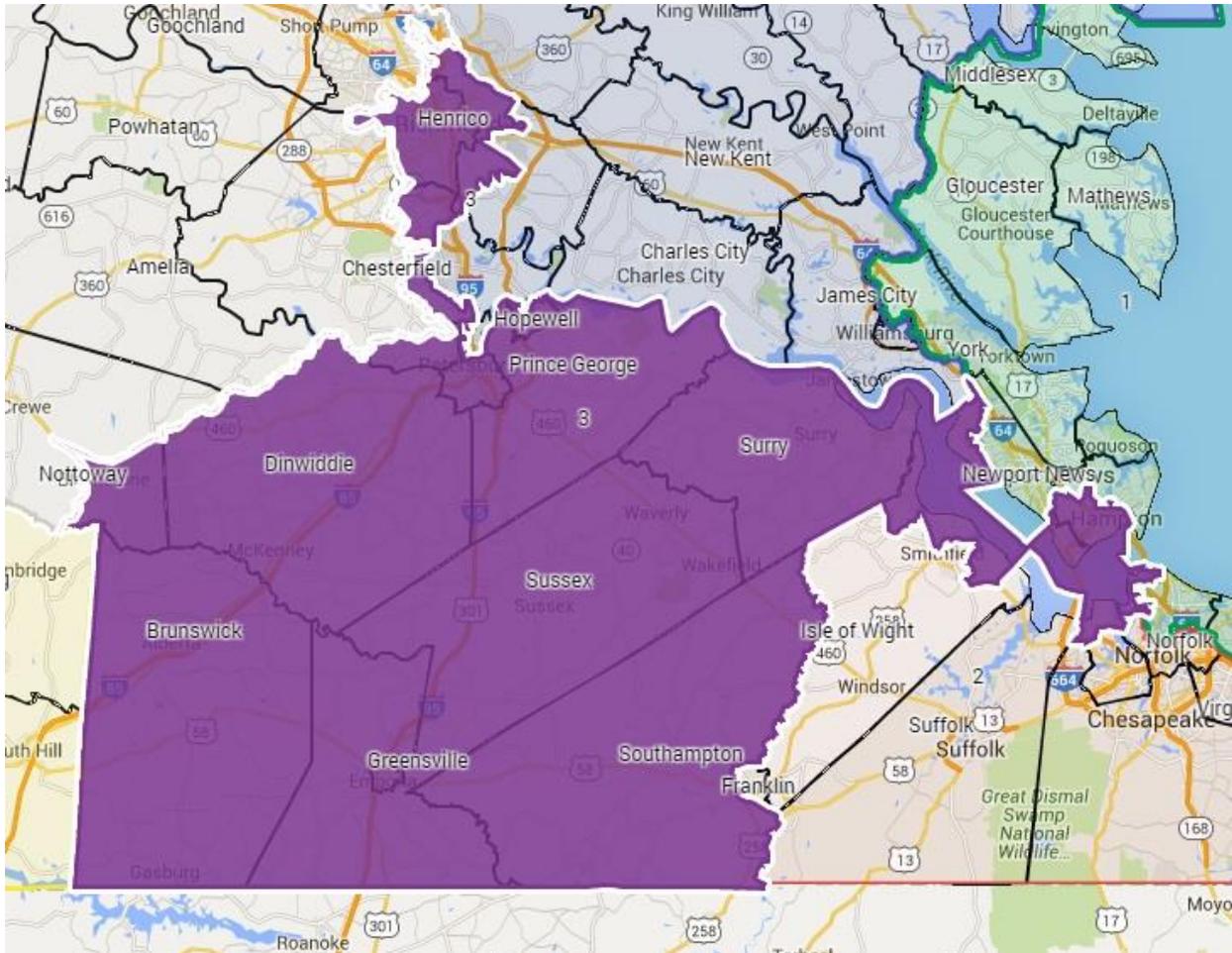
First, Sen. Peterson’s plan’s 3rd District is no longer contiguous. Areas of Portsmouth and Norfolk are, and an area of Newport News is, not connected by road to the remainder of the 3rd District as seen here:



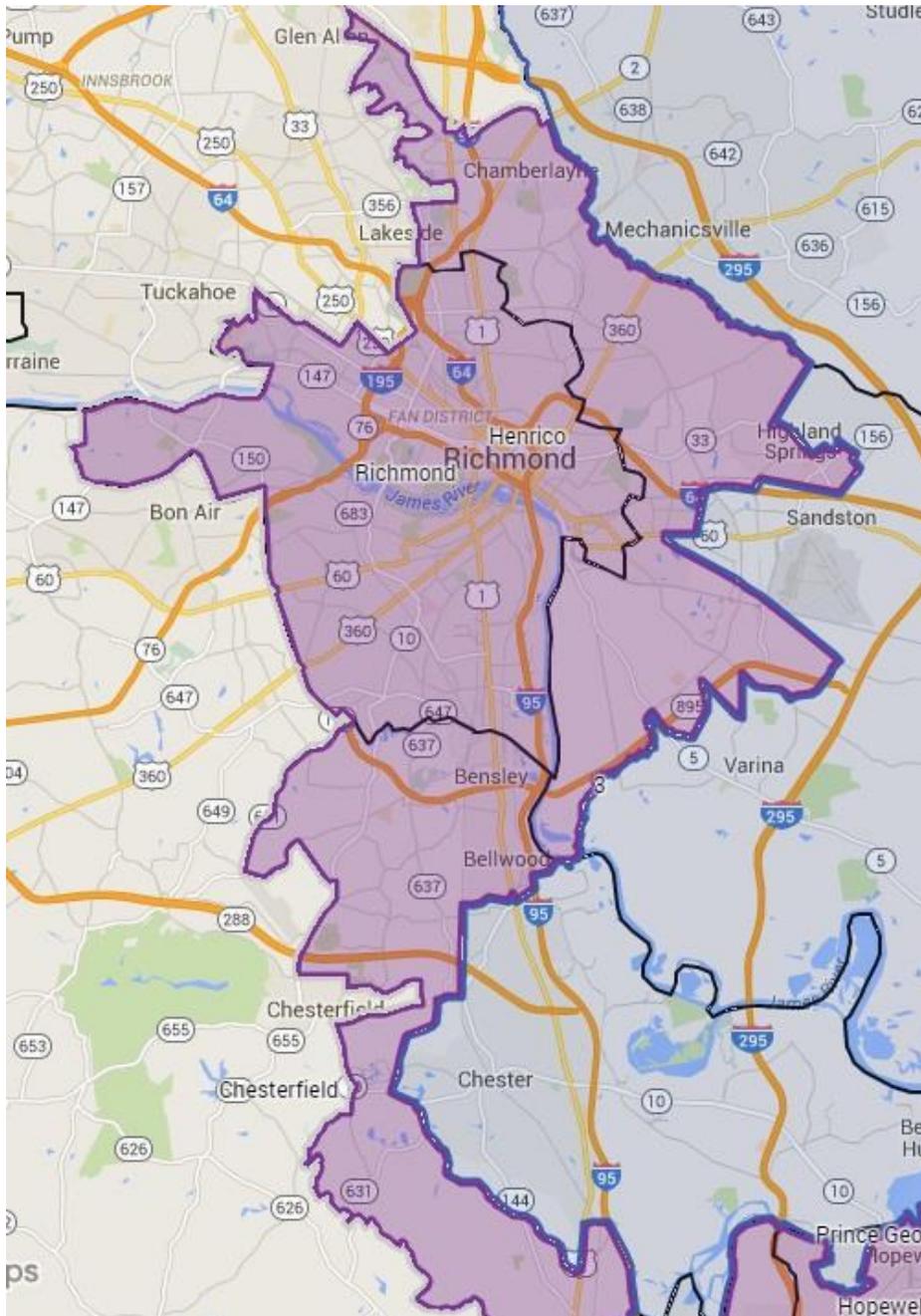
Second, at least two of the districts are not sufficiently compact. The 1st District (which roughly coincides with the 2nd District in most maps) contains Virginia Beach and the portions of four separate peninsulas. The oddity of course is that the 1st District is contiguous by road as the Ocean View Precinct in Norfolk is utilized to access a bridge from the Virginia Beach area up to the other three peninsulas. The 1st District can be seen here:



More importantly, the 3rd District may be the least compact of all districts of all submitted plans in addition to not being contiguous as seen here:



In addition to the odd non-contiguous neck of the district in the East, the 3rd District also contains a trail leading up to Richmond. Despite the fact that there are no significant physical boundaries making a connection difficult, the Richmond area is connected by a neck that at its narrowest reaches approximately 1900 feet as seen here:



### G. DONALD GARRETT'S ["DG"] SUBMISSION

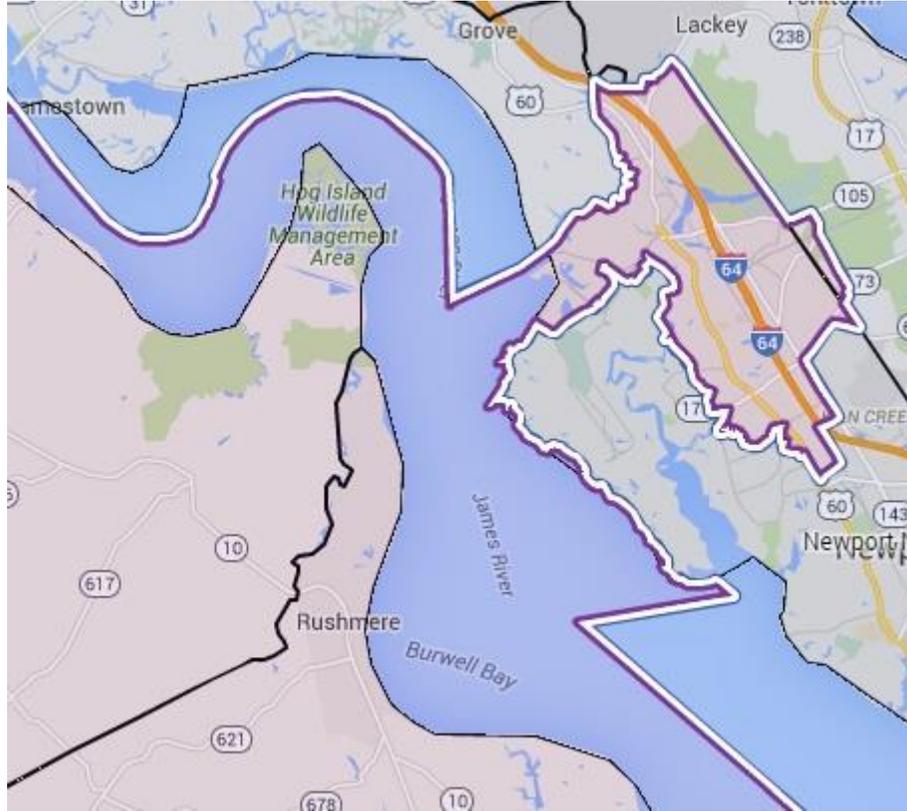
DG's plan consists of turning all eleven districts statewide into at-large districts. The plan, by its nature, excels at equalization, preserving political boundaries, avoiding the use of race, compactness, and contiguity. The plan does not take into account the specific purpose of the House of Representatives where each representative is supposed to represent a somewhat distinct constituency of equal population to other representatives. It does not take into consideration the 2012 Plan or any attempt to preserve minority representation in the Virginia delegation.

### H. JACOB RAPOPORT'S ["JR"] SUBMISSION

JR's submission is less preferable than the TBE Plans for three reasons.

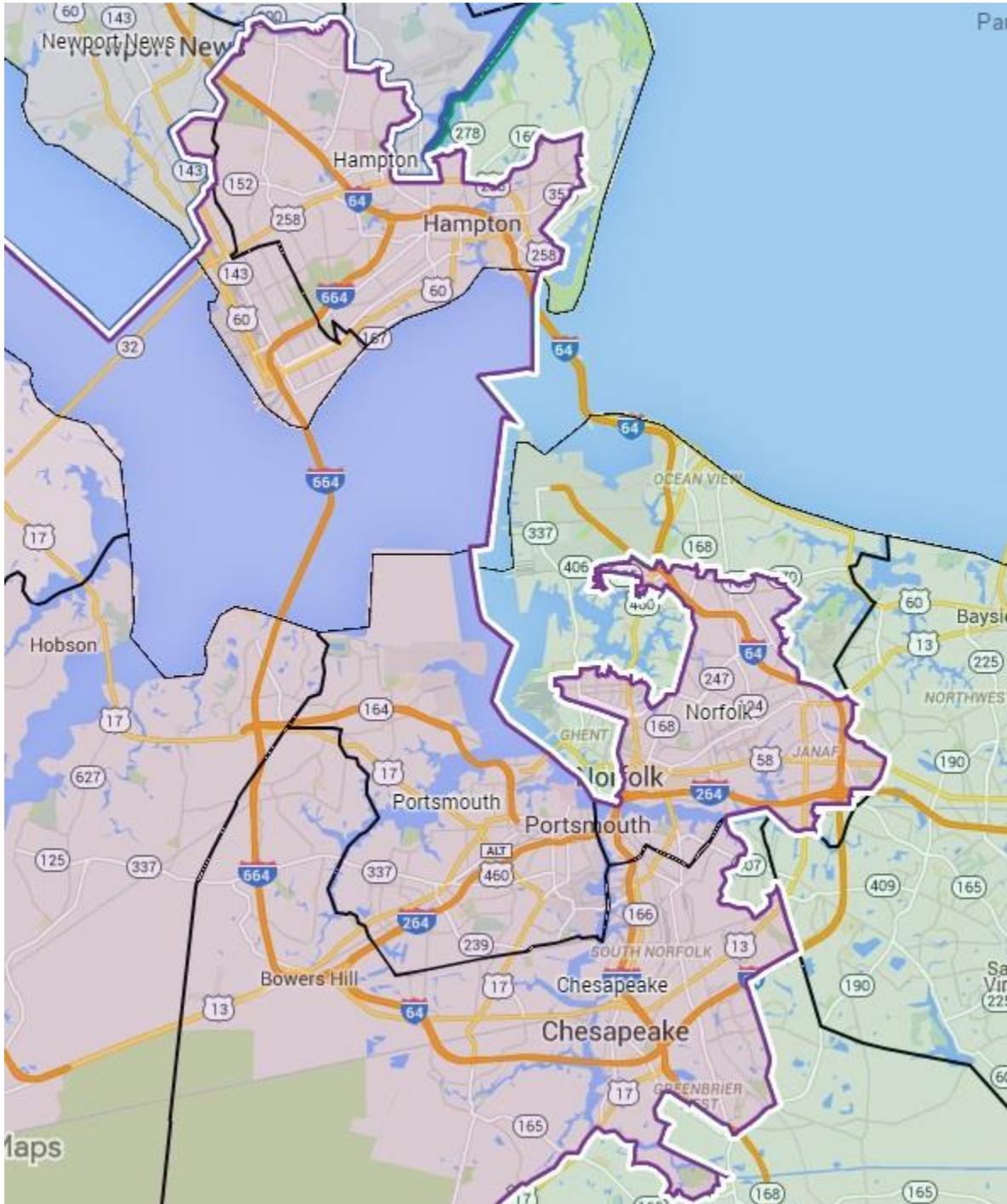
First, JR's plan clearly uses racial considerations as the primary factor in redistricting. The 2012 plan was struck down because race was determined to be the primary factor in redistricting. Instead of making race one of a number of factors, JR's plan brings it to the forefront in trying to create two districts with specific racial composition in order to obtain a specific electoral outcome based on race.

Second, the JR Plan's 3rd District is no longer contiguous. There is a portion of Newport News that has been carved out of the First District for which there is no bridge or land access except through other districts.

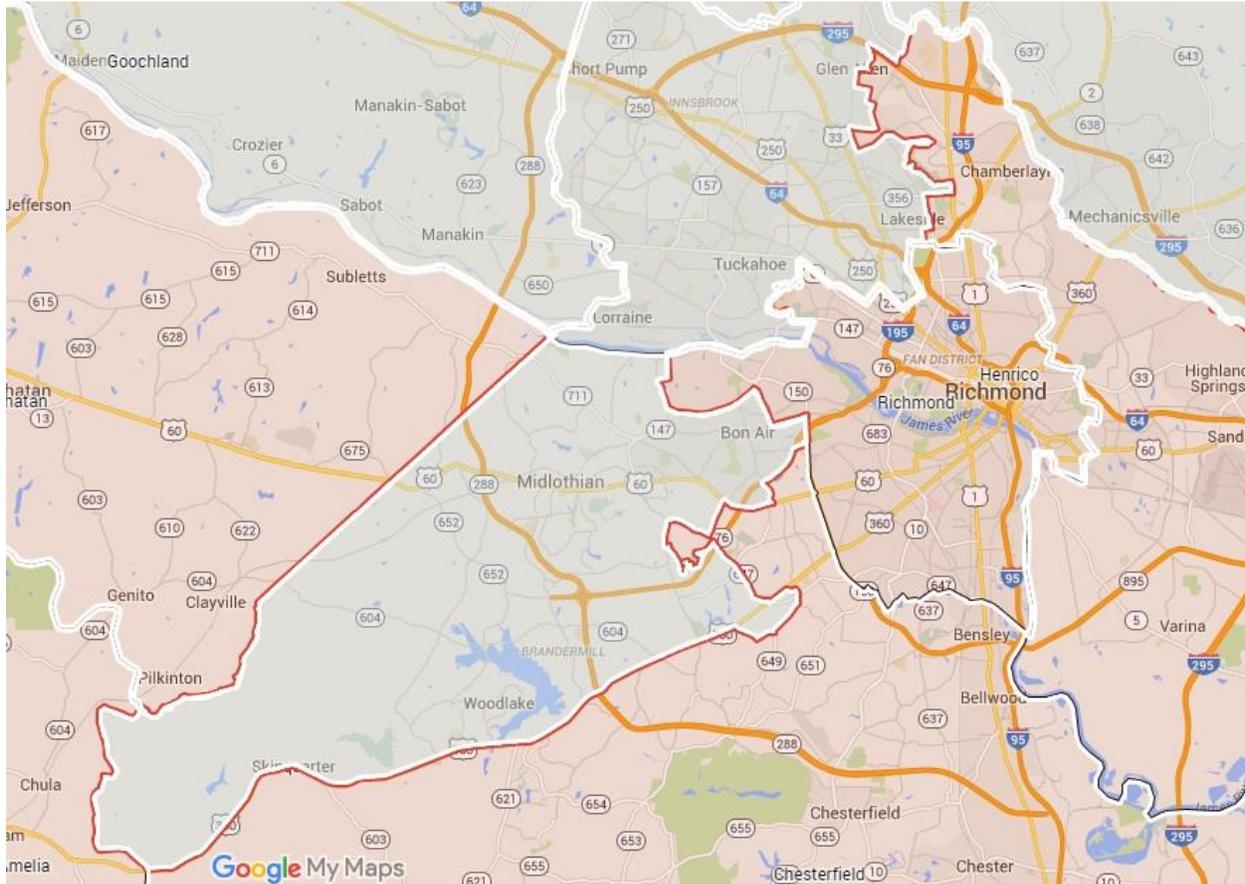


Third, tendrils and promontories are prevalent in the 2nd, 3rd, and 4th Districts. This is done to incorporate communities with higher BVAP's in the 3rd and 4th Districts to create minority representation opportunities. These problems can be seen in the following maps:

Hampton, Norfolk, and Chesapeake carved up between the 3rd and 2nd Districts:



Richmond area with bottlenecks as small as approximately 900 and 1200 feet:



Similar to the deficiencies in the Governor's plan and the NAACP plan, the contiguity problems are problematic enough to warrant dismissing the plan, but when viewing the 2nd, 3rd, and 4th Districts, it is apparent that picking and choosing constituencies based on race, regardless of compactness is a driving force.

## V. CONCLUSION

In light of recognizable redistricting criteria in Virginia the Court and Special Master have significant contributions by many different parties. The Court has ordered redistricting to remediate a specific constitutional violation of having drawn the 2012 Plan based predominantly on race. Some parties have overcorrected and are essentially using race as an even more important factor than was considered in the 2012 Plan. Nearly all the maps, other than the TBE

Plans have serious problems with compactness and contiguity. Although Virginia has unique and interesting geographic features (and political boundaries) it is clear that many of the plans deemphasized compactness and contiguity in favor of achieving a political goal. TBE encourages the Court and Special Master to review the precinct data files and statistics for the TBE Plan, consider the TBE maps and utilize the work done in TBE's submissions in drawing new, fair, and Constitutionally-compliant lines for the Commonwealth.

Dated: October 7, 2015

Respectfully Submitted,  
Bull Elephant Media LLC,  
By Counsel

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**Certificate of Service**

I hereby certify that on this 7th day of October, 2015, I will electronically file the foregoing with the Clerk of Court using the Court's CM/ECF system, which will then send a notification of such filing (NEF) to the parties in the case, an electronic version of the submission will also be sent to the interested parties who have provided submissions or briefs:

BY: \_\_\_\_\_/s/\_\_\_\_\_  
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	<b>Plaintiffs</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	Racial considerations were prominent in the promulgation of this plan.	Racial considerations were considered as one of many factors.	TBE Plan A	Racial considerations were considered as one of many factors.	TBE Plan A
2. Compactness	Substantial efforts to avoid tendrils and promontories were made outside of the 3rd District.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B
3. Contiguity	The 3rd District is divided into three separate landmasses accessible only by boat or by traveling through other districts.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	Equivalent
5. 2012 Plan	All of Hampton Roads has been moved out of the 2nd District, and all of Norfolk has been moved out of the 3rd District. The 4th District now reaches into Richmond City.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	Plaintiffs
6. Preservation of political divisions	This map makes substantial efforts to preserve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	Plaintiffs	Preserves perfect political division at the Precinct but not County and City levels statewide.	Equivalent

	<b>Congressional Republicans 1 and 2 ["CR's"]</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	CR's maintained a majority/minority 3rd District with a BVAP of slightly above 50%.	Racial considerations were considered as one of many factors.	Slight advantage TBE Plan A	Racial considerations were considered as one of many factors.	Slight advantage TBE Plan B
2. Compactness	Substantial efforts to avoid tendrils and promontories were made outside of the 3rd District and 2nd District.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B
3. Contiguity	The 3rd District appears to be divided into three separate landmasses accessible only by boat or by traveling through other districts. The 2nd District appears to be contiguous only by connecting the Ocean View Precinct in Norfolk to the Phoebus Precinct in Hampton.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	Equivalent
5. 2012 Plan	Strong attempts have been made to preserve the most recent plan.	Strong attempts have been made to preserve the existing plan.	CR's	Strong attempts have been made to preserve the existing plan.	CR's
6. Preservation of political divisions	These maps makes substantial efforts to preserve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	Equivalent	Preserves perfect political division at the Precinct but not County and City levels statewide.	Equivalent

	<b>Governor</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	Racial considerations were prominent in the promulgation of this plan.	Racial considerations were considered as one of many factors.	TBE Plan A	Racial considerations were considered as one of many factors.	TBE Plan B
2. Compactness	Tendrils and promontories are prevalent in the 1st District, 3rd District, 5th District, 8th District, 10th District, and 11th District. The separations of precincts is severe in the areas where the 8th and the 10th Districts meet.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B
3. Contiguity	Serious deficiencies in the 2nd District. The 2nd District can no longer be traveled via road as the bridge connecting Norfolk to Hampton has been cut out of the 2nd District.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	Equivalent
5. 2012 Plan	Vague attempts have been made to preserve the most recent plan.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	TBE Plan B
6. Preservation of political divisions	This map makes a reasonable effort to preseve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	TBE Plan A	Preserves perfect political division at the Precinct but not County and City levels statewide.	TBE Plan B

	<b>NAACP</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	Racial considerations were prominent in the promulgation of this plan.	Racial considerations were considered as one of many factors.	TBE Plan A	Racial considerations were considered as one of many factors.	TBE Plan B
2. Compactness	Tendrils and promontories are prevalent in the 2nd District and 4th District.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B
3. Contiguity	Serious deficiencies in the 2nd District. The 2nd District can no longer be traveled via road as the bridge connecting Norfolk to Hampton has been cut out of the 2nd District.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	Equivalent
5. 2012 Plan	Vague attempts have been made to preserve the most recent plan.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	TBE Plan B
6. Preservation of political divisions	This map makes a reasonable effort to preserve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	Equivalent	Preserves perfect political division at the Precinct but not County and City levels statewide.	Equivalent

	<b>Richmond First ["R1"]</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	The 3rd District is substantially different, but it is preserved as a majority/minority district.	Racial considerations were considered as one of many factors.	Equivalent	Racial considerations were considered as one of many factors.	Equivalent
2. Compactness	Tendrils and promontories are found in the Norfolk area of the 3rd District. The 4th District is separated by the Cheseapeake bay and contains portions of three peninsulas.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B
3. Contiguity	The 4th District on this map is roughly equivalent to the 2nd District on other maps. Parts of the 4th are connected by the Cheseapeake Bay with no road access except through multiple other districts.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	Equivalent
5. 2012 Plan	No attempt has been made to preserve elements of the existing plan.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	TBE Plan B
6. Preservation of political divisions	This map makes a strong effort to preseve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	R1	Preserves perfect political division at the Precinct but not County and City levels statwide.	Equivalent

	<b>Sen. Petersen ["SP"]</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	The data for this redistricting competition plan is no longer readily available online. The 3rd District is said to be a majority/minority district.	Racial considerations were considered as one of many factors.	Unknown	Racial considerations were considered as one of many factors.	Unknown
2. Compactness	Tendrils and promontories in the 6th District. The 1st District is made up of portions of four separate peninsulas. Aside from the contiguity problems which also are compactness issues for the 3rd District the neck leading from the heart of the 3rd up into Richmond is a severe gerrymander. At its narrowest point the neck reaches approximately 1800 feet in width.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B

Continued.	Sen. Petersen ["SP"]	TBE A	Advantage	TBE B	Advantage
3. Contiguity	Serious deficiencies in the 3rd District. The 3rd would be made up of four unconnected land masses were it not for a bridge that makes up the border of a precinct coming from Isle of Wight County over to Newport News. The areas of Portsmouth and areas of Norfolk in the 3rd District are neither connected to the remainder of the 3rd District nor to each other.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	Equivalent
5. 2012 Plan	No attempt has been made to preserve elements of the existing plan.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	TBE Plan B
6. Preservation of political divisions	This map makes some effort to preseve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	TBE Plan A	Preserves perfect political division at the Precinct but not County and City levels statewide.	Equivalent

	<b>Donald Garrett ["DG"]</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	No attempt was made to consider race in any manner.	Racial considerations were considered as one of many factors.	TBE Plan A	Racial considerations were considered as one of many factors.	TBE Plan B
2. Compactness	Districts are Compact.	Substantial efforts to avoid tendrils and promontories were made.	DG	Substantial efforts to avoid tendrils and promontories were made statewide.	DG
3. Contiguity	Contiguity is preserved.	Contiguity by road achieved.	DG	Contiguity by road achieved.	DG
4. Equalization	Although perfectly equalized, this plan eliminates the direct connection to a constituency when a plan normally divides a state into separate congressional districts.	Sufficient.	TBE Plan A	Sufficient.	TBE Plan B
5. 2012 Plan	No attempt has been made to preserve elements of the existing plan.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	TBE Plan B
6. Preservation of political divisions	This map preserves all political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	DG	Preserves perfect political division at the Precinct but not County and City levels statewide.	DG

	<b>Jacob Rapoport ["JR"]</b>	<b>TBE A</b>	<b>Advantage</b>	<b>TBE B</b>	<b>Advantage</b>
1. Remediation of the violation	Racial considerations were prominent in the promulgation of this plan.	Racial considerations were considered as one of many factors.	TBE Plan A	Racial considerations were considered as one of many factors.	TBE Plan B
2. Compactness	Districts are fairly compact. There are tendrils and promontories in the 3rd District and 2nd District in the lower area of the James River.	Substantial efforts to avoid tendrils and promontories were made.	TBE Plan A	Substantial efforts to avoid tendrils and promontories were made statewide.	TBE Plan B
3. Contiguity	Contiguity is an issue in a portion of the 3rd District. There is a portion of Newport News that is not connected to any other part of the District.	Contiguity by road achieved.	TBE Plan A	Contiguity by road achieved.	TBE Plan B
4. Equalization	Sufficient.	Sufficient.	Equivalent	Sufficient.	TBE Plan B
5. 2012 Plan	Some attempt has been made to preserve elements of the existing plan.	Strong attempts have been made to preserve the existing plan.	TBE Plan A	Strong attempts have been made to preserve the existing plan.	TBE Plan B
6. Preservation of political divisions	This map makes some effort to preseve County and City political divisions.	Preserves perfect political division at the Precinct but not County and City levels.	TBE Plan A	Preserves perfect political division at the Precinct but not County and City levels statwide.	TBE Plan B